

United States
Circuit Court of Appeals

For the Ninth Circuit. 19

UNITED STATES OF AMERICA,
Appellant,
vs.

SEATTLE TITLE TRUST COMPANY, as Guard-
ian of the Estate of VERNON A. PETERSON,
Incompetent,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington.
Northern Division.

FILED
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

ANTHONY SAVAGE, Esquire, and CAMERON SHERWOOD, Esquire, Attorneys for Appellant, 310 Federal Building, Seattle, Washington.

LESTER E. POPE, Esquire, Attorney for Appellant, 800 Liggett Building, Seattle Washington.

Messrs. WETTRICK, WETTRICK & FLOOD, Attorneys for Appellee, 805 Arctic Building, Seattle, Washington. [1*]



In the District Court of the United States, Western District of Washington, Northern Division.

No. 20205.

SEATTLE TITLE TRUST COMPANY, as guardian of the Estate of VERNON A. PETERSON, Incompetent,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT.

Comes now the plaintiff and for a cause of action against the defendant, alleges as follows:

I.

That the plaintiff at all times herein mentioned was and now is a corporation duly organized and

*Page number appearing at the foot of page of original certified Transcript of Record.

existing under and by virtue of the laws of the State of Washington, and has paid all license fees and taxes due the state. That plaintiff is the duly appointed and acting guardian of the estate of said Vernon A. Peterson, incompetent, by virtue of an order of appointment of the Superior Court of King County, Washington.

II.

That the said Vernon A. Peterson enlisted in the military service of the United States on November 30, 1917, and was honorably discharged therefrom on the 1st day of January, 1919.

III.

That on or about the date of his enlistment the said Vernon A. Peterson applied for insurance against the risks and hazards of war and received a policy for \$10,000 of war risk term insurance, which provided that in the event he should become permanently and totally disabled during the lifetime of the policy from pursuing continuously any gainful occupation he should receive the sum of \$57.50 a month, so long as he should live. That on or about the date of his discharge, the exact date being known to defendant herein, the defendant terminated the policy of insurance for the failure of said Vernon A. Peterson to pay the premiums thereon, but that said termination was wrongful and void by reason of a total and permanent disable- [2] ment which caused his policy to mature and which entitled him to the total and permanent benefits thereunder.

IV.

That during the military service of said Vernon A. Peterson, and while the said policy of war risk insurance was in full force and effect, he suffered from an enlargement of the lymphatic glands, disfunction of the cervical glands and that he further suffered a mental disorder and from mental deterioration, nervous prostration and neuresthenia, which rendered him totally and permanently disabled, and that from and after the date of his discharge from service he has suffered continuously from these diseases and their after effects and sequellae, and that notwithstanding repeated honest and conscientious efforts to work he has been unable to earn his livelihood, and plaintiff has been informed and believes that these disabilities are likely to continue throughout the lifetime of the said Vernon A. Peterson.

V.

That plaintiff has exhausted all and sundry his rights of presentation and appeal in and with the United States Veterans Bureau and has made demand for the payment of the sums due said Vernon A. Peterson under his insurance contract, but that said Bureau has failed and refused to pay the same and plaintiff is informed and believes that a disagreement exists.

WHEREFORE Plaintiff prays judgment against defendant in the sum of \$57.50 a month from date of discharge of the said Vernon A. Peterson until date of judgment herein, and for \$57.50 per month

thereafter so long as said Vernon A. Peterson shall live, as provided by law, and for its costs and disbursements herein.

CHRISTOPHERSON & NEWMAN,
WETTRICK & WETTRICK,

Attorneys for Plaintiff,

805-808 Arctic Bldg.,

Seattle, Washington. [3]

State of Washington,
County of King.—ss.

Harold V. Smith, being first duly sworn, on oath deposes and says: That he is the Assistant Trust Officer of the Seattle Title Trust Company, of Seattle, a Washington corporation, the duly appointed guardian of the estate of Vernon A. Peterson, incompetent, that he executes this oath on behalf of said corporation, being authorized so to do; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

HAROLD V. SMITH.

Subscribed and sworn to before me this 27th day of May, 1929.

[Seal]

FRANK R. MURTHA.

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed May 29, 1929. [4]

(Title of Court and Cause.)

ANSWER.

Comes now the United States of America, defendant, by Anthony Savage, United States Attorney, Tom DeWolfe, Assistant United States Attorney, and Lester E. Pope, Regional Attorney, United States Veterans' Bureau, and for answer to the complaint of the plaintiff herein, admits, denies and alleges as follows, to-wit:

I.

Answering paragraph I of plaintiff's complaint, defendant states that it has not sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations therein contained, therefore denies the same.

II.

Answering paragraph II of plaintiff's complaint, defendant admits that Vernon A. Peterson enlisted in the military service of the United States November 30, 1917, and that he was honorably discharged therefrom on January 25, 1919.

III.

Answering paragraph III of plaintiff's complaint, defendant admits that plaintiff applied for and was granted war risk insurance in the amount of \$10,000, payable in [5] monthly installments of \$57.50 in the event of insured becoming permanently and totally disabled, or in the event of his death, while said insurance contract was in force and effect;

denies each, every and singularly the remaining allegations in said paragraph contained.

IV.

For answer to paragraph IV of plaintiff's complaint, defendant denies each, every and singular the allegations in said paragraph contained.

V.

Admits paragraph V of plaintiff's complaint.

FOR a further answer and by way of a first affirmative defense, Defendant doth allege as follows, to-wit:

I.

That Vernon A. Peterson, the insured, enlisted on November 30, 1917, and was honorably discharged from service on January 26, 1919; that on December 10, 1917, insured applied for and was granted war risk term insurance in the amount of \$10,000.00, which insurance lapsed for non-payment of premium due February 1, 1919, and was not in force and effect thereafter.

WHEREFORE, having fully answered the complaint of the plaintiff herein, defendant prays that the same be dismissed with prejudice, and *it* that it may recover its costs and disbursements herein to be taxed according to law. [6]

ANTHONY SAVAGE,

United States Attorney.

TOM DeWOLFE,

Assistant United States Attorney.

LESTER E. POPE,

Regional Attorney, United States Veterans' Bureau.

United States of America,
Western District of Washington,
Northern Division.—ss.

Tom De Wolfe, being first duly sworn, on oath deposes and says: that he is Assistant United States Attorney for the Western District of Washington, Northern Division, and as such makes this verification for and on behalf of the United States of America; that he has read the foregoing Answer and First Affirmative Defense, knows the contents thereof, and believes the same to be true.

TOM De WOLFE.

Subscribed and sworn to before me this 27th day of November, 1929.

[Seal] **S. M. H. COOK,**
Deputy Clerk, U. S. District Court, Western District of Washington.

Received a copy of the within answer this 27th day of November, 1929.

WETTRICK & WETTRICK,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 27, 1929. [7]

(Title of Court and Cause)

REPLY.

Comes now the plaintiff and for reply to the answer of the defendant filed herein, affirms and denies as follows:

I.

Plaintiff denies that the insurance described in the answer of the defendant lapsed on February 1, 1919, but affirms that the same expired on or prior to that date by reason of the happening of total and permanent disability, as set forth in the plaintiff's complaint.

WHEREFORE plaintiff prays for judgment in accordance with the prayer of its complaint.

WETTRICK, WETTRICK & FLOOD,

Attorneys for Plaintiff.

State of Washington,
County of King.—ss.

George E. Flood, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the plaintiff corporation, and makes this verification for and on plaintiff's behalf because no officer of said corporation is now present; that he has read the foregoing Reply, knows the contents thereof and believes the same to be true.

GEORGE E. FLOOD.

Subscribed and sworn to before me this 10th day of March, 1931.

[Seal]

F. J. WETTRICK,

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed March 10, 1931. [8]

(Title of Court and Cause.)

VERDICT.

We, the jury in the above-entitled cause, find for the Plaintiff and fix the date of the total and permanent disability of Vernon A. Peterson on or before midnight of February 28, 1919.

FRANK WRIGHT,
Foreman.

[Endorsed]: Filed March 12, 1931. [9]

United States District Court, Western District of
Washington, Northern Division.

No. 20205.

SEATTLE TITLE TRUST COMPANY, as guardian of the estate of VERNON A. PETERSON,
Incompetent,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT.

The above-entitled cause having come on duly for trial on the 10th day of March, 1931, before the Hon. Jeremiah Neterer, one of the Judges of the above-entitled Court, the plaintiff appearing by agent and by its attorneys Lee L. Newman and Wettrick, Wettrick & Flood, and defendant appearing by Anthony Savage, United States District At-

torney, and Lester E. Pope, Regional Attorney for the United States Veterans' Bureau, the trial having been had before a jury, which said jury returned a verdict in favor of plaintiff to the effect that Vernon A. Peterson, its ward, was and at all times herein has been a resident of the State of Washington, Western District, Northern Division; that said ward served in the Army of the United States in the war with Germany from the 30th day of November, 1917, to the 1st day of January, 1919; that he was issued a war risk insurance policy of government life insurance in the sum of Ten Thousand (\$10,000) Dollars free of all liens and encumbrances, upon which premiums were paid to and including the month of February, 1919. That the said insurance was and is payable in installments of \$57.50 per month commencing on the 28th day of February, 1919, upon which date and since which time plaintiff's ward was and has been permanently and totally disabled. NOW, THEREFORE, it is

ORDERED, adjudged and decreed that plaintiff for its [10] ward recover of the defendant the sum of \$8,337.50, which sum represents payments accrued and due under the said insurance policy at the rate of \$57.50 per month commencing February 28, 1919, and continuing to and including the 10th day of March, 1931, the date of verdict herein, said payments to be made as by law in such cases provided; and it is

FURTHER ORDERED, ADJUDGED and DECREED that Lee L. Newman be and he hereby is entitled on behalf of Lee L. Newman and Wettrick,

Wettrick & Flood, attorneys for plaintiff herein, to receive from said judgment as a reasonable attorneys' fee for services in the above-entitled cause the sum of \$833.75, which sum is ten per cent. (10%) of the said \$8,337.50, and that he be and hereby is entitled to receive the further sum of ten per cent. (10%) on each and every payment made by defendant to plaintiff's ward, his heirs, executors or assigns, in consequence of or as a result of the entry of this judgment, said payments to be made as by law in such cases provided, to all of which exception is hereby allowed to the defendant.

DONE in open court this 3rd day of April, 1931.

JEREMIAH NETERER,
Judge.

Received copy of the within Judgment this 2nd day of April, 1931.

ANTHONY SAVAGE,
Atty. for Deft.

O. K. as to form

LESTER E. POPE,
Atty U. S. V. B.
TOM De WOLFE,
Asst. U. S. Atty.

[Endorsed]: Filed Apr. 3, 1931. [11]

(Title of Court and Cause.)

MOTION FOR NEW TRIAL.

Comes now the defendant, the United States of America, by Anthony Savage, United States Attor-

ney for the Western District of Washington, and Cameron Sherwood, Assistant United States Attorney for said District, and Lester E. Pope, Regional Attorney for the United States Veterans' Bureau, and petitions the above Court for an order granting a new trial in the above entitled cause, for the following reasons, to-wit:

(1) Error in law occurring at the trial and duly excepted to by the defendant.

(2) Insufficiency of the evidence to justify the verdict.

ANTHONY SAVAGE,
United States Attorney.

CAMERON SHERWOOD,
Assistant United States Atty.

LESTER E. POPE,

Regional Attorney, United States Veterans' Bureau.

Received a copy of the within motion for new trial this 20 day of Mar., 1931.

GEO. E. FLOOD,
Attorney for Pltff.

[Endorsed]: Filed Mar. 20, 1931. [12)]

(Title of Court and Cause.)

ORDER DENYING MOTION FOR NEW
TRIAL.

THIS MATTER having come before the above entitled Court on the motion of the defendant herein, for a new trial, and both parties having submitted

said motion to the Court for ruling thereon, without argument, and the Court being duly advised in the premises; now, therefore, it is hereby,

ORDERED and ADJUDGED that the defendant's motion for a new trial herein be, and the same hereby is, denied, and an exception is noted on behalf of the defendant.

DONE in open Court this 1st day of April, 1931.

JEREMIAH NETERER,

United States District Judge.

Approved:

WETTRICK, WETTRICK & FLOOD,

Attorney for Plaintiff.

[Endorsed]: Filed Apr. 1, 1931. [13]

(Title of Court and Cause.)

DEFENDANT'S PROPOSED BILL OF
EXCEPTIONS.

BE IT REMEMBERED that heretofore and on, to-wit, the 10th day of March, 1931, at the hour of 10 o'clock, A. M., the above entitled cause came regularly on for trial before the Honorable Jeremiah Neterer, one of the judges of the above entitled court, sitting with a jury, in the north court room of the Federal Building, Seattle, Washington; the plaintiff appearing by George E. Flood and Lee L. Newman, its attorneys and counsel; the defendant appearing by Anthony Savage, United States At-

torney, Cameron Sherwood, Assistant United States Attorney, and Lester E. Pope, Regional Attorney for the United States Veterans Bureau, its attorney and counsel;

WHEREUPON, a jury having been empaneled and sworn, and opening statements having been made by counsel for the plaintiff and for the defendant, the following proceedings were had and testimony taken, to-wit: [22]

HAROLD B. SMITH, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

My full name is Harold B. Smith. My business is that of Trust Officer, Seattle Title Trust Co., formerly the Seattle Title Company. The Seattle Title Trust Co. is the guardian of the Estate of Vernon A. Peterson.

Mr. NEWMAN.—We have here a certified copy of the order of appointment.

The COURT.—Very well. Let it be filed.

(Whereupon Plaintiff's Exhibit No. 1, being a certified copy of order of appointment of guardian, was admitted in evidence.)

I have been connected with and have acted as Trust Officer of the Seattle Title Trust Company since the appointment of the company as guardian of the estate of Vernon A. Peterson. The company has been acting as guardian since the time of the appointment.

(Testimony of Harold B. Smith.)

Cross examination by Mr. POPE.

My company is operating a trust business.

RUTH PETERSON, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

My name is Ruth Peterson and I am the wife of Vernon A. Peterson, now a ward of Seattle Title Trust Company. Mr. Peterson and I were married at Camp Lewis, Washington, in 1918. He was there until January 25, 1919. I was living with my parents until his discharge January 25, 1919. My parents resided in Seattle in Georgetown. I saw him many times after my marriage until his discharge. He came in from Camp Lewis. I couldn't say how often it was. We were [23] married November 15, 1918, and he was discharged January 25, 1919. He was stationed in Camp Lewis all the time he was in service so far as I know. I didn't go down to Camp Lewis except once, and that was before we were married. He visited me every week, as often as he could get away or get a pass. I would say once a week. As soon as he was discharged we went to San Jose and then to Santa Cruz. We visited his mother in San Jose just a short time. We were in Santa Cruz over a period of a couple of months. He was with me all the time we were in San Jose and Santa Cruz. From Santa Cruz I went to San Jose and he went to Los Angeles. He wrote me many letters

(Testimony of Ruth Peterson.)

from Los Angeles, and was supposed to send for me. I was in San Jose. When I went down to Los Angeles he didn't have any work. He worked for a short time right after I got down there loading cars. He worked at that not very long, around a couple of weeks—something like that. During the time he was employed in Los Angeles he was very nervous. He would pace up and down the room. He would go out of the house and wouldn't seem to know where he left things. (Answer of witness as to inability of her husband to find things stricken by the Court).

After he had eaten his supper he would faint away—fall out of his chair. He would topple over that way. That condition would continue for several minutes. He would finally get out of it and would be out of his head altogether. He would act dazed. (Court strikes out answer as to dazed condition). Plaintiff objects, exception allowed. He was very pale. He had a glary look in his eyes. His eyes were inflamed. He would look straight out. When he went to bed he would sleep the rest of the night. He would get up and try to work the next morning. He went to work then. He would go to this company loading cars for them. I do not know what company. He worked there to my [24] knowledge a couple of weeks. He had fainting spells when he would come home in the evening after dinner. They would come in succession. He had three in succession. Three days in succession, night after night. I don't think they recurred afterwards. That

(Testimony of Ruth Peterson.)

was the only time he had fainting spells. After he quit his job we returned to Seattle. After he had fainting spells he was out of his head and made strange gurgling sounds. When he first came out of it he was nauseated. He was very nauseated. I don't recall whether he vomited. He complained of being very sick after these spells. He had these fainting spells before he quit.

When we came to Seattle we lived with my parents, Mr. and Mrs. St. Michel, about a month. He didn't work during that time. After we returned from California he started to look for work in about a month and went to work on a street car as conductor for the City of Seattle. He went to work around in July of 1919. He worked there about two months on the street car. He had broken shifts with no definite hours. The shifts varied—most of his shifts were at night, and he usually went to work at twelve o'clock at noon. He would work over a period of probably four hours—varying from day to day. As a rule he came home late at night, about one or two o'clock, and he then would go to bed. He would get up at ten o'clock in the morning. He would eat at eleven in the morning. He ate all of his meals out except his breakfast, because he wasn't at home. He was out of bed practically every day on his feet. He worked quite steady—as often as there was work for him on the extra list. At home he slept until about ten in the morning, and while he was on the street car he wasn't home to speak of in the daytime. He was transferred from the street

(Testimony of Ruth Peterson.)

car to the Georgetown car barn where he was head mechanic. He [25] continued there for about six months. He went to work each morning at eight o'clock. He worked eight hours. His work was quite steady. It continued about six months. He took his meals at home. He ate his meals regularly, morning, noon and evening. He spent his evenings at home. He was very nervous in the evening. He would pace back and forth—go to one chair and sit in it, then pace back and forth, then to another. He was extremely nervous. He usually went to bed early, about nine o'clock. He would get up at 6:30. The balance of the family retired about the same time, and all got up about the same time. I was never in the car barn while he was working there. He would pace around the room, back and forth. Back and forth. On the go continually. He did not sit down. I did not see him make change. I did not ride on the street cars with Mr. Peterson. I do not remember that he missed any meals when he came home.

He didn't go to a doctor in that time if I remember. He had a peculiar expression from his eyes. It was glassy and very stary. The eyes would bulge. Outside of being extremely nervous, pacing back and forth, back and forth, I have nothing definite in mind. He stammered quite a bit.

After working in the car barn he went into a garage on Corson and Duwamish Avenue. The building wasn't as large as this room. He only had a handful of tools. He was in there two months. He never had but one car in there. I was in the

(Testimony of Ruth Peterson.)

garage frequently. He had one car to repair while he was in there, and when he finished it, it would not run. I saw him work on the car. He was very awkward in picking up the tools. He worked on the car. I am not familiar with the tools he used. After he got a regular set of tools he had to leave the garage. He wasn't at the garage all the time. I would go down there when he wouldn't be [26] there. I don't know where he was. This was during business hours. He was in the garage about two months. After leaving the garage business Mr. Peterson didn't do anything for a few months, and finally he went to the Mission Theater. He stayed with me in the interim. He was very nervous. He would start to do one thing, and then forget all about it, and then do something else. He would start to pick up something and couldn't find it. He ate his meals regularly, went to bed about the same time as the family did. He regulated his habits with relation to meals, sleeping, and so on, the same as the family did. He was always on his feet in the daytime. Always pacing back and forth, back and forth. He was in the show business from May 1, 1921, to the middle of 1924. He wasn't home very much. He went into this theater. I would go with him to the theater and then go with him to get the films. He would go into the film exchange with the films for the night before and get advertising and films into the car and we would go back. We had everything written down for the night's performance, and I would watch to see that he got everything for the night's business. I didn't go into the

(Testimony of Ruth Peterson.)

film exchange, but I would check to see if he had everything. He was working in the capacity of janitor in the theater and seeing that the show was clean for the evening. He had a partner who was in California. The partner did the managing. I was with him every day and saw that everything was ready. He would just sweep up and dust the chairs and see that the films were put in the operating room for the operator. He would start the fire and see that the show would be warm. He would get home about eleven o'clock. I had little children and I could not keep them out. I had the first child November 15, 1919, the next one March 30, 1921, the next one June 1, 1922, the last [27] one February 1, 1924. His whole ambition was to make a living. He was attached to the children.

Mr. Lilly had charge of running the show business. He was the partner. I went along to see that the necessary things were taken and done for the evening show. Sometimes he would not return with the proper materials. Before starting to go with him he would go to town and not bring back the necessary pictures for the show, and we would be unable to start. I know that he would not bring back the pictures. He was supposed with respect to his duties at the show to look this up. In the evening if someone wasn't there to watch him he would leave the front and back doors wide open, and many times he left his night's receipts in the box office window. It was part of his duty to put the money away. This conduct continued all the time he was in the show. The Mission Theater is

(Testimony of Ruth Peterson.)

in Georgetown. At the Mission Theater he would pace up and down the aisles, back and forth.

After he left the Mission Theater he went south to visit his mother in San Jose. He didn't do much of anything in California. He was nervous on the train, and the muscles of his face would twitch in every direction, and he had a stroke while he was in the theater afterwards, on the side. That was in 1923. He went to a chiropractor. I do not know where the chiropractor is. Sometimes it would strike his tongue and sometimes he could not talk. Sometimes it would strike his hand. It would be just paralyzed for the period. Sometimes that would last half an hour or three quarters of an hour. Very frequently. They lasted for about a year. He was in California just a short time. He went back in the Ruston Theater in Tacoma. He left the house with the car and I didn't see him for a period, and then he came back— [28] He was gone a couple of weeks, and I had to run the theater in Tacoma and take care of the children, and when I would tell him he would have to help he would pout, and one night he came into the theater without any trousers on. That was in 1925. We had rooms in the theater. He came into the theater when I was playing the piano and stood right in the light of the lamp, so there was a full view. I said "Why did you do that?" He said he didn't do anything. His mind seemed to be blank. There wasn't anything there. It didn't seem to affect him. He didn't seem to know what happened, and then I finally made him go to bed. The next day I talked to him

(Testimony of Ruth Peterson.)

about it, but it didn't seem to affect him in any way. I would ask him to put the car away, and then he would go into the theater and peek around the curtain and see if I was watching him. I was afraid people would see him and they would pick him up, and I talked to him and told him he could not go without his clothes, and he said, "I will go out there without any clothes on." This continued all the time we were in the Ruston Theater—about three months. Then we came back to Seattle. He tried to work. I couldn't tell you just where he applied. I didn't see him work. Each time he would say he had a job, and he only lasted about an hour on a job. That continued until he was put in the hospital. I think that was in the fall of 1925. I have seen him since. He is at the hospital for the insane at American Lake. They are giving him a few things to do to keep their minds busy. He does only little things. He recognizes me and wants to show me everything like a little child. I have taken the children over there. He is glad to see the children, but he is more like a child than the father. He has come home on furlough from time to time. At one time he was home for over a period of eight months. [29] He would fly into rages toward me, and he came after me with a butcher knife, and then another time he came after me with clenched fists, and if he wasn't pampered I could not stay with him, and I humored him on every occasion. He was home on Washington's birthday for three days. He would roam around the house at night and just run

(Testimony of Ruth Peterson.)

around. I do not know that he went on the street without clothes. He would be always hovering over my bed. I reported his conduct back to the hospital.

Cross Examination by Mr. POPE.

The first time we went to California was in 1919. I don't remember that it was the Southern Pacific Railway Company he was working for. We went to California in 1919 on the train and came back on the train. When we went to California in 1924 we drove a car. I drove most of the way.

That is my signature on defendant's Exhibit A-1. That is my signature on defendant's Exhibit A-2. I know Mr. Clemenson, a Notary Public, before whom Exhibit A-1 was sworn to by me. He was connected with the American Legion. I don't remember signing this. As I recall, I went to Mr. Flood in connection with my claim for compensation. I remember of seeing Mr. Clemenson at the office. I don't remember signing defendant's Exhibit A-2 before Mr. Knapp. I remember Mr. Knapp. Mr. Knapp was a service officer.

When my husband came back to Seattle he went to work for the Seattle Municipal Railway. I can't remember the exact date he went to work. I think it was some time in July. I couldn't give you the exact date, but I didn't think he worked from July, 1919, up to the first half of June, 1920. It might have been. I couldn't state positively. [30] He went to work in this garage as soon as he quit the Seattle Municipal Railway. He made arrangements to purchase the garage before he quit the Railway

(Testimony of Ruth Peterson.)

Company. He went to work from the Seattle Municipal Railway Company right into the garage within a few days. He wasn't in the garage over two months. The next employment was the Mission Theater. I think that he started running the Mission Theater later than November, 1920. I thought it was in 1921. I could not give you the exact dates. He stayed in the Mission Theater until about September, 1924. The first partner my husband had in the Theater was Mr. Woodhouse. About February 20, 1921, the partnership with Mr. Woodhouse was dissolved. I don't know the exact date. He wasn't with Mr. Woodhouse very long. Woodhouse was never in the theater himself. It was in the hands of a receiver for winding up the business of the partnership. There was two theaters. He was alone in the old theater. The second partner was Mr. Lilly. I don't know where Mr. Lilly is. Mr. Lilly was there from 1921 up to some time in 1924. I think. I think about April, 1924, my husband signed a contract for the purchase of a new building for the theater. He didn't purchase anything. I would say that he did not have \$5900.00 to pay down on the new theater building. I don't know what the price was. After the down payment the rate of pay was \$400 per month. Mr. Lilly did not continue as a partner in the new theater. Just my husband from April, 1924, until September, 1924. I don't have the books showing the receipts in the business for that time. I could not tell you what the receipts of the business were at that time. I would

(Testimony of Ruth Peterson.)

not say the receipts were twenty five hundred dollars a month. Probably about eighteen hundred. I don't imagine they ran over that. The amount of the business that was [31] being done at that time,—it has been a long time ago. I could not give you any exact figures.

After leaving the Mission Theater in September, 1924, we went to California. I think my husband came back in December, as near as I can recollect. He ran a theater in Ruston near Tacoma, about March to June, 1925.

(Defendant's Exhibits A-1 and A-2, being affidavits, were received in evidence and read to the jury.)

As I recall, the theater we ran in Ruston was operated from March to June, 1925. He made a claim to the government about September, 1925. He was in the hospital after that for a time. He has been in the hospital periodically since that time. I don't remember the date he worked for Love & Company, but he worked for them operating a saw-dust burner on one of his furloughs from the hospital. He worked as janitor of the Seattle Office Equipment Company for some time, but the date I could not give you. I imagine it was in 1929. It probably was for about eight or nine months. He was treated by a chiropractor in 1923 and after that he probably was treated by our family doctor, Dr. Guthrie, in 1923. Dr. Guthrie attended me at the time of the birth of my children. I don't know whether Dr. Guthrie is still in town.

(Testimony of Ruth Peterson.)

Redirect Examination by Mr. NEWMAN.

It is a fact that the show was in Ruston and not in Renton. The new theater building referred to in my previous testimony wasn't worth \$15,000. I saw the contract. He didn't pay down fifty nine hundred dollars because he didn't have it. He didn't pay \$400 a month on the contract because he was very much behind in his payments. I was fully familiar with the facts of the new theater. I knew of the arrangements with respect to the building, the contract and [32] the contractor himself. I have testified that I signed both the affidavits marked as defendant's Exhibit A-1 and defendant's Exhibit A-2, wherein I stated that during 1919 my husband was bright, keen, full of life, active and intelligent. I ran the theater at Ruston in 1925.

Mrs. JENNIE POWERS, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

I am Mrs. Jennie Powers, and I reside at 961 Harney, at Seattle, in Georgetown. I am an aunt of Mrs. Peterson. Her mother was my sister.

I knew Mr. Peterson when he came back from the army after his discharge in 1919. He came to our house, to my sister's house. I was living there at the time. Well, he would pace the floor, sit on one chair, get up and then sit in another. He had a

(Testimony of Jennie Powers.)

glassy look out of his eye. I wasn't there when he ate or when he slept. I didn't know Mr. Peterson very well. I met him two or three times. I only met him once or twice before his discharge. I didn't live at the house. I believe just once. I just met him. He said "How do you do?" and then he walked off, and then first sit in one chair and then in another. I can't describe how he did act. He was very nervous. That is all. Standing in front of you, and kept talking about what he was doing—what he was going to do. He was with me but a few minutes and he got up and left. I didn't meet him again until he came to my house and lived. That was in June, 1919. At that time he paced the floor and walked around. He would walk around as though he didn't know me. I would speak to him and he would not answer. He just looked at me. I may [33] or may not have introduced him to someone. I did not introduce him to my present husband. He was forgetful. He would make two or three trips to the house to get what he was looking for. When he was working on the street cars he would start out to work and then come rushing in for something and then go back and then come back again. I asked him what he wanted and he wouldn't pay any attention but go back to the apartment and then go to his work. I saw him do this a couple of times. At different times I would meet him on the street and he would not speak to me. He would look at me and then look down. It seems as though he would not see me or hear me. That was in June, 1919. He was at our home about a

(Testimony of Jennie Powers.)

month. I saw him quite some time after he left my home because I was working at the time and wasn't around that part of the time. It was about a month later. He acted about the same. They went to California shortly after he was discharged from the army. The second time in 1924 or 1925. He acted about the same the next time that I saw him. I knew Mr. Peterson and had an opportunity to observe him while he was in the show business. He went into the show business in 1921 or 1922. He acted about the same. I had a confectionery stand in the show house. He would run up and down the aisle, apparently not noticing anyone in particular. He didn't have anything to do in particular. He seemed to be busy doing nothing. I did not see him after the theater closed in the evening. [34]

Mr. W. J. POWERS, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

My name is W. J. Powers. I am the husband of Mrs. Powers who just testified a moment ago. I am related by marriage to Vernon A. Peterson. I knew Vernon A. Peterson. I first met him in 1921. He would act kind of funny. He would stand talking to you and all at once he would walk away and pretend there was no one there at all, and then ten minutes afterwards he would pay no attention to

(Testimony of W. J. Powers.)

you. I put him down as a nervous wreck. That occurred at different times. I met him a dozen times or more. Sometimes he would come up and make a big fuss over me, and then a little later he would not know me. That was on the street. Later on I met him at my wife's home four or five years later. He was committed to the hospital then. I was friendly with him. Friendly as I could be. I do not know what his actions toward his wife and family were.

Cross examination by Mr. POPE.

The first time I met him was in 1921. Late in the summer, July or August.

W. J. CAREY, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

My name is W. J. Carey. I am a sergeant of Police, stationed at the Wallingford Police Station. I was stationed at Georgetown and went there September 3, 1922. I knew Vernon A. Peterson after I came to Georgetown. I was in charge of the station at nights, and he came up to make complaints. I investigated the complaints. He acted as though he was hopped up. He acted like a hophead, like a man full of dope. He had his clothes on when he came in. He had on khaki, soldier's pants or breeches, vest, a soft shirt, and about three or four

(Testimony of W. J. Carey.)

days growth of beard on his face. That was when he was running the show. I knew something about the theater other than as an official. I met Mr. Peterson from day to day. When I went down to the theater he seemed to be in charge. He put out the posters in front. He would have a show going on and the wrong posters there. The posters indicated the show that was going on in there. There were posters out at times of shows that had not been run at all. I could not say when this was. It was in 1923, I believe. I saw him run in the theater, run up and down the aisles. I was in charge of the precinct. I went there in the night time. I found there was a police padlock on the theater.

Cross Examination by Mr. POPE.

The first time I knew him was in 1922. I became better acquainted with him in 1923. I went there in September, 1922. These instances I spoke of occurred in 1922, 1923 and 1924. I became better acquainted with him in 1923. Some time in 1923 I first noticed the posters. [36] I noticed these police padlocks on the door the same time I was out there. I had not seen anything like that prior to 1923. He seemed to be directing the affairs of the theater while I was around there. He seemed to be in general charge of the theater. I would judge the theater would seat about 250 or possibly 300 people. The old theater, that is. He had a pretty good crowd there.

W. J. JONES, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

My name is W. J. Jones. I am a police officer at Georgetown precinct No. 3. I have been there about seventeen years. I know Vernon A. Peterson. I first met him in 1921. It was when he was in the old theater. I had an opportunity to observe him at that time. He was very flighty. He would talk to you on one subject and change off to some other subject. He was always after the police to clear up the place. He said boys were bothering him, and the boys were two or three blocks from his place. I made an investigation. He was always excited in the theater. At times he was awful excited and would speak to no one. Very flighty. He would come to the police station and make complaints about the boys at night. I investigated. This occurred about four or five times in 1921 and 1922. I observed him in 1922 and 1923 several times. His conduct then was about the same. In 1923 and 1924 he commenced to be in very bad shape. Less bright, growth of beard on his face, clothes half off. I did not have any knowledge with respect to the closing of the theater. [37]

Cross Examination by Mr. POPE.

I saw him in the theater in 1922 and 1923. In 1924 I saw him after he got out of the theater. I did not see him after the latter part of 1924. He

(Testimony of W. J. Jones.)

used to run around through the aisles during the time I saw him at the theater. It seemed like he was in charge of the theater. Most of the time the theater was pretty well filled up. In 1923 and 1924 he got in rather bad shape. He was different in 1921. Later he became very shabby in his appearance. He was very neat in 1921. I didn't notice that he was shabby then. He was about the same in 1922. It was only in 1923 or 1924 that I began to notice that he got shabby.

EMIL ST. MICHEL, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

I know Vernon A. Peterson. My name is Emil St. Michel. I first became acquainted with him in 1918. I met him when he was coming out to the house the first time. I saw him with consistency after that time. Sometimes he would come in the house and didn't look at me at all. He would just go right by and it looked to me that there was something wrong with him. The first time I saw him I didn't pay any particular attention to him. He would come up to the house. He would go right by and didn't say anything to me half the time. Sometimes I would see him and speak to him, and he would just look at me and turn his head. He would have an opportunity to see me. He did so many things that I didn't pay any attention. Sometimes when he ran

(Testimony of Emil St. Michel.)

the show he would go to buy films and after he bought the films he would forget. He came and asked me to get the film and [38] the film store had closed. He didn't have any film to start his show, and I went after the film myself. I believe the last time I saw him was Christmas.

Cross Examination by Mr. POPE.

I am related to Mrs. Peterson. I am his step-father-in-law.

Mr. W. A. SCHLAX, recalled as a witness on behalf of the plaintiff, testified as follows on

Direct Examination by Mr. FLOOD.

Dr. Quilliam is a Bureau doctor, and that is a Bureau examination, the examination of September 3, 1925. The next examination is of September 11, 1925, by Dr. Smythe and Dr. Melvin. I don't know whether or not Dr. Smythe and Dr. Melvin were Bureau doctors. This is taken from the Bureau records. The next date I have here is March 14, 1926. Dr. Ernst made that report. That is the report of the examination made at the United States Veterans Hospital. The next report is of April 12, 1926, by Dr. R. H. Rea. That is supposed to be a report of a Bureau examination. The next report is dated June 4, 1926, by Dr. D. G. Dickerson. That is a Bureau report. The next examination was on October 7, 1926, and on April 18, 1927, and on October 20, 1927 by Dr. L. F. Wood. I believe other

(Testimony of W. A. Schlax.)

doctors joined with me on the examination of October 20, 1927. The next report I have is of May 21, 1927. Those are likewise reports of the United States Veterans Bureau or its hospital. There are reports for July 27, 1928, October 25, 1928, March 29, 1929, January 13, 1930. That is everything except the examination of October 20, 1927, which is right here. Those are all taken from records of the Veterans [39] Bureau.

(Plaintiff's Exhibits 2 to 15, inclusive,
offered, received and read in evidence)

Dr. E. A. NICHOLSON, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. FLOOD.

My name is Dr. E. A. Nicholson. I am a physician licensed to practice in the state of Washington. My work is limited to nervous and mental diseases entirely. I have had occasion to examine Vernon A. Peterson on the 20th of August, 1925, April 8, 1926, and on December 12, 1929. On the date of the first examination I found a slurring of speech, slight irritability, and tendency to forget. I had a Wasserman made and the report was two plus. Positive evidence of syphilis. A two plus is a mild case of syphilis. Three plus is stronger and four plus is the strongest. On two plus alone you would not be justified in saying that he had syphilis, but

(Testimony of Dr. E. A. Nicholson.)

from the history, the slurring of speech and the increased reflexes, I did express an opinion that he had cerebro-spinal syphilis, or a bit more definite, cerebro-spinal paralysis. There are subdivisions of that, and following that and later reports I felt that he would come under one of the general subdivisions, namely, general paralysis of the insane, or paresis. That is a disease of the brain and spinal cord, caused by syphilitic infection. I think we always find a syphilitic history of the general paralysis of the insane. It is a general condition which involves the brain through the blood vessels. As a result of this infection it may involve one part of the brain more than some other part, but because it is likely to involve all parts of the brain, it is spoken of as general paralysis of the insane. [40] The physical symptoms are changes in the reflexes, and there are mental conditions. They become unsteady; there is a trembling speech and becomes rather indefinite and slurring; we find when they are writing they leave out letters. The majority of the paretics are exalted in their ideas. They have big ideas as to their ability to do things and they have big schemes as to their future. There is a type—a small percentage—who are depressed and quiet, and they tend to dement quite rapidly until they become insane. There is a general weakening of the mental faculties, and a general weakening of the physical individual. They become finally bedridden, lose control of the bladder, and, as I say, general paralytics in every way. Neuro-syphilis is a syphilis of the ner-

(Testimony of Dr. E. A. Nicholson.)

vous system. Cerebro-spinal syphilis means that you have syphilis both of the brain and of the spinal cord. If you put in beginning paresis, it would mean to show it is more definitely confined to that disease. Loquaciousness with respect to cerebro-spinal syphilis means that they talk a lot. I don't know what mild euphoria means. Syphilis tertiary is the third stage. We class syphilis in different classes according to the stage of the infection. Beginning from the first stage of infection where we find the source of infection. Some weeks later, we find there is evidence of a general systematic involvement, and we have eruption appearing on the body, and we class that as the second stage of syphilis. The third stage is what occurs weeks or months later and remains the life of the individual. As soon as the syphilis reaches the last stage it may attack the liver, heart, skin, spinal cord, brain; you may have it in any part of the body; but if you have neuro—it means nerve syphilis. It means that he has had syphilis for a long time and is showing evidence of involvement of the [41] nervous system. General paralysis of the insane and paresis are the same. The word "paresis" is usually used for short. Scanning or slurring of the speech means the dropping of syllables. These people do not seem capable of enunciating clearly. They will leave out syllables in certain phrases. The word "Grandiose" means "grand idea." He has a grand idea of himself. It means his emotions are unstable. He may laugh or cry and his emotions are unstable. Social inadaptability is

(Testimony of Dr. E. A. Nicholson.)

the inability to adapt oneself to the surroundings or particularly those in your social connections with other people. Loss of memory is more likely to be for present events. The reason is that, at present, they are incapable. They do not seem to get the time and distance and place properly, while in the past, when there was no impairment there, the brain cells would record the events more clearly. Mental deterioration means a breaking down of the mental faculties of the person. Inability to conduct mental problems in a normal way. That is incident to paresis in the later stages. Mental deterioration of the volitional feeling is practically the same thing. It is not the emotions, but it is more to your desire to act, and the other is more to your conduct. You may or may not find a positive Wasserman in cases of paresis at all times. You may find a blood Wasserman without a positive finding in the spinal cord. That would be a rare condition, and would make you doubt whether the man had paresis, unless, at the same time, you found a positive in the spinal cord. You may find a negative blood Wasserman and the spinal fluid positive. You might later find a positive Wasserman even though you first found a negative Wasserman in connection with the treatment of paresis. In some of the paretics regardless of treatment the fluid remains positive. If you stop treatment you find that [42] the blood or spinal fluid becomes positive.

I felt at the time I first examined him that he was not fit to take up any work, as he could not be

(Testimony of Dr. E. A. Nicholson.)

depended upon. General paresis of the insane is a permanent disability—a progressive disease. Yet, we do find in most general paralytics there will be a period where the patient is decidedly better, and in that period patients have returned to their former occupations, or to other work, but only for a short length of time in the majority of cases. There are some cases that probably go two or three years. There are exceptions reported going four, six, and ten years in one of these periods of remissions which they have. I have only information on three different occasions, the last one in December, 1929. At that time he was decidedly better than he was prior to this time, but from my experience I would expect him to follow the other cases and have a recurrence. I think it was only a remission and temporary.

Cross Examination by Mr. POPE.

I never saw him to my knowledge until August, 1925. These three stages of syphilis, primary, secondary and tertiary syphilis, are stages of the disease itself and may or may not have any connection with the brain or the nervous system. The blood vessel walls are so affected in a large percentage of these cases from the time the person contracts the infection, and may or may not. A person may have syphilis for twenty years and never show any brain involvement; and up to the time you find a brain involvement syphilis constitutes little or no disability. Any other stage of syphilis would not disable a person from carrying on in any substantial occupation. A man may have syphilis involving the heart

(Testimony of Dr. E. A. Nicholson.)

or blood vessels and never have anything the [43] matter with his brain. But outside of conditions like that a man may have syphilis and never know he has it and never be disabled from going on with his work.

Redirect Examination by Mr. FLOOD.

A man may have neuro-syphilis without general paralysis of the insane, or syphilis that might paralyze the eye muscles or the muscles of an arm or leg, and he might not have cerebro-syphilis, and he might have both or any combination.



Mr. L. H. COLLINS, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

My name is L. H. Collins. I am a police officer stationed at Georgetown or Precinct No. 3 for the last fifteen years. In my duties at Precinct No. 3 I met Vernon A. Peterson and knew him down there. We were in contact with him a good part of the time since he was in the moving picture business. I cannot fix the time exactly. I suppose 1921, 1922 or 1923. I worked where his show was and once in a while we would go in. Sometimes it was necessary for us to go in and see that the crowd was orderly, and of course we would come in contact with Mr. Peterson, and then he would often come to the police station. Sometimes I was clerk in the station there,

(Testimony of L. H. Collins.)

and he would come in to make reports about various things to us. I saw him personally come into the station and I would walk up to the window and ask him what he wanted, and he would turn away and go away. It seemed he would report that somebody was watching him—imaginary, apparently. I saw nothing about him unless the [44] conduct when he would be in the office there, and his appearance. When I would be in there sometimes I would go to the show when I was off duty, and sometimes I would be on duty and be in there. I remember he was quite busy at times. They would have one night a week when they would have amateurs, and he would seem to be chasing around all over the house for no purpose. His appearance would attract you. Anybody would even notice his actions and his appearance the way he was chasing around. I would say he was nervous and flighty. Sometimes he wasn't very well dressed. He looked as though he needed a shave and maybe a bath—as though he wasn't very clean. I don't think of anything else that I observed regarding the show house.

Cross Examination by Mr. POPE.

I would not be positive. It was 1921 or 1922 or 1923. It might have been 1923. He was not well dressed at times and that was more particularly along the latter part of the time that I knew him. His peculiar actions which I noticed were probably more particularly in 1923 and 1924.

DAN MANZO, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

My name is Dan Manzo, and I am a tailor in business at 6012 12th Ave. South. That is Georgetown. I know Vernon A. Peterson. I first met him in 1919. I knew him from then until almost the time he went to the hospital. That has been a couple of years I think. I observed him and his actions during the time I knew him. In 1919 I [45] fixed a suit of clothes for him, and he always promised he would come in, but I could never get him in the store. I asked him if he would come in and try on the coat and he said "Oh, yes," and he would be all excited, and so finally after I asked him half a dozen times I got him in front of the store and got him in and while he was trying his coat on he was nervous and gritting his teeth, so I asked him if he was nervous or anything, and if he wanted a glass of water, and he said, "Oh, no." That was in May, 1919. He came back after the coat. After that I have seen him many times. He acted about the same. He was always nervous and excited. He stuttered quite a bit. Afterwards, I believe, he was in the show business, and he came in and asked me for an ad on the theater curtains. I told him I would give him an ad, which I did, and he came in and brought me a contract, and I never did see the ad on the curtain. I asked him about it, but could not get any

(Testimony of Dan Manzo.)

answer. He promised he would put it on the curtain, but he never did. In 1919 he always walked funny on the street. Like he was singing or dancing. There was no one with him at that time. In 1919 his conduct was about the same. Whenever I went over and talked to him and said "Hello, Mr. Peterson", and he looked around excitedly and said nothing. Sometimes he would say "Hello". Either of us would do nothing more than say "How are you, Mr. Peterson?" He would turn around and say "How are you?" I made no further observation of him in 1921. I remember when the show started in 1921. It must have been 1921 when Mr. Peterson started the show in Georgetown. I saw him running the show there. I have told you all I know. [46]

Cross Examination by Mr. POPE.

In 1919 was when I made the suit of clothes for him. I am sure it wasn't as late as 1924 when I first noticed anything. This is my signature on Defendant's Exhibit A-3. (Defendant's Exhibit A-3 received in evidence.)

C. F. GRAY, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows on

Direct Examination by Mr. NEWMAN.

My name is C. F. Gray. I am a police officer at present stationed in West Seattle. On June 1, 1920, I

(Testimony of C. F. Gray.)

was transferred to Georgetown. I became acquainted with Vernon A. Peterson when he was in the show business. That was in the fall of 1920. I observed that he was a very nervous and excitable person. I didn't see him do anything that I could think of. I recall that I found his theater unlocked. If I recall, that was in 1921. The doors of the Mission Theater. I found them unlocked only once. I found the back door of the new theater open twice. That was after twelve o'clock at night. I don't remember when the new theater was built.

Cross Examination by Mr. POPE.

I don't recall whether the new theater was built about April, 1924. From the fall of 1920 to the spring of 1924 I only found the doors of the theater unlocked once when I was on the night shift. After the new theater was built in 1924 I found the back door open twice.

Plaintiff Rests.

[47]

Mr. POPE.—At this time the government moves for a non-suit on the ground and for the reason that the evidence deduced for and on behalf of the plaintiff does not establish a prima facie case, and is legally insufficient to sustain a verdict;

And on the further ground that there is no proof of permanent and total disability of Vernon A. Peterson during the time this contract was kept in force and effect. I would like to be heard.

The COURT.—I will hear you briefly.

Mr. POPE.—There is positively no evidence that would tend to establish total and permanent disability in the early part of 1919, and in connection with this the plaintiff has introduced reports of the government doctors,—and before that, which show no treatment of any kind while he was in service. Then he came out of service and went right to work. Although the wife has testified, there is really little testimony of any kind of any condition which the man may have been in in 1919. The only thing, she says he had two or three fainting spells, and the man's present condition, as testified to; nothing which in any way shows that he had that condition or that he was totally disabled at that time. Furthermore, on cross examination, affidavits have been put in evidence here in which the wife stated that in 1919 her husband was full of life, neat, active, and intelligent. Now, then, the wife's whole testimony really gives nothing which will in any way controvert that.

In 1923, and 1924, and along in there some nervous symptoms apparently appeared. The man has [48] worked, according to the wife's testimony for a time in California; worked here for the Seattle Municipal Railway for about a year, ten months, I believe, she admitted, but stated it might have been a year. As Your Honor will remember, she testified that he went to work regularly; ate his meals regularly; went to bed about the same time as the family did, and went to work in the regular manner, and during

the ten months or a year, there is not one bit of evidence that he was totally disabled,—only the most general symptoms while he was working for the Municipal Railway, and during that time he was transferred from his position as conductor to head mechanic at the car barns,—and a man who is competent to do his duties regularly as head mechanic at car barns for several months, could not have been totally disabled; and there certainly is no evidence of it. And at the time he quit, he quit not because of physical condition but because he wanted to go in the garage. Apparently he had some trouble making a living, but in any event, he was there a few months. In addition, there are some symptoms shown as to the time he was in the theatre, but the fact remains he was in the theatre from November, 1920, to September, 1924, a period of four years. During these four years, it is admitted that the man,—although his actions may have been peculiar,—was working there; he was going down town getting the films; he was sweeping out the theatre, although the policeman said he was in charge,—this, regardless of his nervousness,—and there is no evidence of total or permanent [49] disability. In Ruston, 1925; they went to California,—and Dr. Nicholson has come along and examined him in 1925. Dr. Nicholson is not in any way contravening the evidence of government doctors. It is true, in 1925; but Dr. Nicholson has not gone back, and has not attempted to show that this man was totally disabled prior to that time, and he has positively testified that syphilis

may exist for years and years and the man may not even know that he had the disability. There is no medical testimony of any kind that this man was either totally disabled in 1919 or permanently so. There were no symptoms in 1919 or 1920, or along in there, in any way connected with this, and the jury would be left wholly to speculation, and as far as total and permanent disability is concerned, there is certainly no proof to go to the jury on that issue, while the policy was in force and effect.

The COURT.—What have you to say?

Mr. FLOOD.—Your Honor has considered this question so often that I hesitate to take up your time.

The COURT.—I wondered why Dr. Nicholson wasn't asked about his condition prior to that time.

Mr. FLOOD.—I considered it, but when I considered it,—the vast scope of the testimony,—I realized that it would be impossible to frame any hypothetical question that would withstand objection. The various complaints having existed continuously since would seem to make out the case of paresis, and without indulging in a question, considering the wide variety of the testimony, I went definitely to the point in the issue. [50]

The COURT.—We have now before the court the testimony that the soldier, the ward, had syphilis when he was discharged and during his service, and Dr. Nicholson testified that it is a progressive disease; that it could be held in abeyance for a long

time; that a person may discharge normal functions for many years.

Mr. FLOOD.—That is true in the abstract case. I think Your Honor must recognize, and there is no question about it, that the Blackburn case never would have been reversed but for one thing; it was only because of the admission of the coroner's report, and the evidence was not to be compared with this. There were a lot of doctors who were not called, but in this case that rule they laid down in the Blackburn case does not apply. We had here definite testimony of conduct, abnormal and eccentric. It is true it can be said that the wife's testimony is contradictory when you consider the affidavits, but they may disbelieve her or believe her as she testified.

The COURT.—But they must have something upon which to predicate the belief. They can't speculate.

Mr. FLOOD.—We have her testimony supported by the testimony of this tailor. True there is a work record. It is the condition while he was at work that counts, and the jury has a right to take into consideration the circumstances that existed along with the work record. There is the testimony of the aunt and the father-in-law.

The COURT.—That does not amount to much. [51]

Mr. FLOOD.—I think it would be a mistake to say that it does not support a reasonable inference,

and that we have a right to ask. We have a right to rely upon the opinion of a doctor, but Your Honor from your experience knows that would have been conjectural, but the jury have heard all the testimony.

The COURT.—This is the strongest thing you have in your favor, that is, Justice Holmes opinion, that the jury is the final arbiter of all questions of fact, and the court ought not to take a matter from the jury, but that is a broad statement.

Mr. FLOOD.—I think there is evidence sufficient to carry the case to the jury.

The COURT.—Now, there is this element in this case. I think, as it stands now, the court should submit it to the jury; and that is the testimony of the wife as to his conduct, and, especially those three fits that she said he had when he worked somewhere, and Dr. Nicholson's testimony that this is a progressive disease; and I think that the court ought to submit it to the jury, with proper instructions, to determine whether the ward was totally and permanently disabled from the date of the discharge and unable to carry on continuously in any gainful occupation within the purview of the law; but the partial disability would not obtain if he became totally and permanently disabled now. He was totally disabled in 1924; that would not answer the question; but I think, in view of some expressions of the Court of Appeals and several members of the Supreme Court with relation to non-suit, the

safer [52] proposition is to submit it to the jury. And the motion will be denied.

Mr. POPE.—That trip to California was after the policy lapsed.

The COURT.—But Dr. Nicholson's testimony is that it is a progressive disease. He described to the court and jury the relations that might obtain and the effect it would have for short periods, and it being a progressive disease, and this condition having developed, I think the court should submit it to the jury.

Mr. POPE.—Exception—

HARRY B. FLANDERS, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is Harry B. Flanders, I am employed in the City Comptroller's office, city of Seattle. I am junior accountant. My duties take me all over the office, partly consisting of looking after various warrants in the custody of the city comptroller. I have with me warrants which are paid the employees of the city railway. I have warrants in connection with the employment of Vernon A. Peterson in 1919 and 1920. The employment was apparently continuous. There are twenty three warrants. Two warrants for each month, covering eleven and a half months. Defendant's Exhibit A-4 is made up of

(Testimony of Harry B. Flanders.)

photostatic copies of warrants drawn by the city comptroller on the City Railway Fund, to pay the salary or wages of an employe identified as Vernon A. Peterson. These warrants are dated from July 25, 1919, to June 25, 1920. They are in chronological order. Two for a month. There would be one for July 25, 1919, two for [53] August, and so on down to June, 1920.

(Defendant's Exhibit A-4, being a group of checks, received in evidence)

The COURT.—He has already explained them.

A.—(the witness reading). The first check is July 25, 1919, drawn for \$54.98; August 11, 1919, for \$62.42; August 26, 1919, for \$64.94; September 10, 1919, \$27.49; September 25, 1919, for \$22.71; the next is for October 10, 1919, for \$26.03; the next for October 25, 1919, for \$63.98; November 10, 1919, for \$58.40. The next for November 25, 1919, for \$57.09; December 10, 1919, \$57.75; December 24, 1919, \$66.94; January 10, 1920, \$65.30; January 27, 1920, \$67.59; the next is for February 10, 1920, in the amount of \$68.91; February 25, 1920, \$56.44; March 10, 1920, for \$59.72; March 25, 1920, for \$68.25; the next is April 10, 1920, for \$72.18; April 27, 1920, for \$68.25; May 10, 1920, for \$68.25; May 25, 1920, \$73.50; June 10, 1920, for \$64.31; and June 25, 1920, for \$15.09.

I have not the number of hours he worked and the rate of pay. Those records are kept in the street railway department. Mr. Thompson has charge of the payrolls.

(Testimony of Harry B. Flanders.)

Cross Examination by Mr. FLOOD.

I did not know Mr. Peterson. I would not know him if I saw him. All I know about him is what my records show. [54]

A. H. GROUT, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is A. H. Grout. I live in Seattle, and I am employed by the city of Seattle in the Civil Service Department. I have charge of the records of the Civil Service Department of the city of Seattle. My records show that V. A. Peterson was first employed beginning July 3, 1919. He then started employment in the same department as machinist's helper, and resigned from that work June 4, 1920. That covers the entire employment. I have his application for employment in 1919. His written application was not made at the time he went to work but a little later—in January, 1921. That was after he quit work—he applied for employment.

The document marked Defendant's Exhibit A-5 is a part of the records of the Civil Service Commission. It is a part of our files referring to Vernon A. Peterson. I have another application for employment. Defendant's Exhibit A-6 for identification is a part of the records of the Civil Service

(Testimony of A. H. Grout.)

Department of the City of Seattle and a part of our files in connection with Vernon A. Peterson.

Mrs. RUTH PETERSON, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

I don't know whether the signature appearing on Defendant's Exhibit A-5 is the signature of my husband, Vernon A. Peterson. I could not tell his signature from the way it looks there. I have received letters from him quite often. Probably once every two weeks or once a month. [55] I don't know whether this is his signature. It looks more like his signature on Exhibit A-6, but I didn't know that he signed it. I couldn't swear to it. The second document looks more like his signature than the first one. That looks like his signature. I can't swear to it if I don't know exactly.

Mr. HARRY B. FLANDERS, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

I was on the stand yesterday. I have additional documents showing that Vernon A. Peterson made earnings not produced here yesterday.

(Testimony of Harry B. Flanders.)

Defendant's Exhibit A-7 is a copy of the additional document. It is a certified copy of an additional warrant which I did not have time to make a photostatic copy of, and therefore had a certified copy made. I have the original warrant. The original of defendant's Exhibit A-7 is the original of the warrant of which I have testified.

(Defendant's Exhibit A-7, a check, received and read in evidence, and copy substituted therefor.)

Defendant's Exhibit A-8 is a true and correct copy of the Seattle Municipal Street Railway payrolls pertaining to Vernon A. Peterson, covering the period from the first half of July, 1919, to June, 1920, inclusive.

I did not know Vernon A. Peterson personally. All I know is that this is a record of Vernon A. Peterson.

Defendant's Exhibit A-8 is a list of the checks issued showing the conditions under which the warrants were issued. There is a column on Defendant's Exhibit A-8 figuring the time in months, days and hours, which are headed M. D. and H. In the hours, there are 103 hours and [56] 30 minutes. That shows the number of hours that were worked during the period named in the period, as first half of July, at the rate of four and a half a day, time for which he worked and for which a warrant was drawn in the amount of \$54.98, No. 22887, cancelled July 26, 1919, assigned to the Barto Company.

(Testimony of Harry B. Flanders.)

Cross Examination by Mr. FLOOD.

I prepared the original records. I didn't know Mr. Peterson. These hours are solely from the record as I found them. I have no personal knowledge of them.

Mr. ALBERT POHL, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination by Mr. POPE.

My name is Albert Pohl. I live at 225 12th Ave. North, Seattle. I am employed by the Seattle Municipal Railway, and I was so employed during the years 1919 and 1920. I was employed at what we generally call the Georgetown shops of the Municipal Street Railway. I knew Vernon A. Peterson in 1919 and 1920. I worked directly with him. I would see him a number of times a day. It might be every hour—it might be twice a day, or even less. The number of men I have under my supervision varies. About a hundred. I might have had more men at that time. Mr. Peterson was first hired as a machinist's helper. He did that work. It is hard to say how long. I put him at overhauling automobiles shortly after that. He repaired automobiles up until June, the first part of June. I have his employment card here.

Defendant's Exhibit A-9 is the employment record of [59] Vernon A. Peterson. It was made by the

(Testimony of Albert Pohl.)

bookkeeper. I know the writing. I know the bookkeeper's handwriting. I have the time books showing Mr. Peterson's work in 1919 and 1920. The bookkeeper kept these records at the time.

(Defendant's Exhibit A-9, being application for employment, received and read in evidence.)

Defendant's Exhibit A-10 was made by the bookkeeper at the shops. I know the bookkeeper's handwriting. That is in the handwriting of the bookkeeper. There are two bookkeepers. I know the handwriting of both of them. One is called Mr. Crank. He is not there now. I believe he is still living in Enumclaw.

(Defendant's Exhibit A-10, being time books, received in evidence.)

The COURT.—(Looks at books). These will be admitted insofar as they relate to Vernon A. Peterson. I had a copy made this morning out of these books. This was taken from those books and shows the time that he worked there during the time he was employed under my supervision. I had them copied this morning. Vernon A. Peterson's work was satisfactory. I didn't see anything wrong with him or about him all of the time he was employed there.

Cross Examination by Mr. FLOOD.

There might have been more than a hundred men employed under my supervision. That is approximately the number. I do not remember all of the names of the men who worked under me in 1919. I

(Testimony of Albert Pohl.)

don't remember how long they worked for me. All I remember is from the records. [58]

Redirect Examination by Mr. POPE.

I remember the man. He worked directly under my supervision. He didn't work under any foreman particularly. He did the repairing of automobiles, and I generally looked after the automobiles myself at that time because we didn't have very many.

W. L. COCHRAN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is W. L. Cochran, and I live at 813 31st Ave., Seattle. I am employed by the Municipal Street Railway and was so employed in 1919 and 1920. I knew Vernon A. Peterson in 1919 and 1920 at the Georgetown Shops where I was employed during that time in 1919 and 1920. Mr. Peterson was working on automobiles on one corner of the armature room. I was working there in the armature room. In the same room with Vernon A. Peterson. I was there eight hours a day. He was there about three weeks one time I know of, and he worked in the machine shop a part of the time and a part of the time in the armature room. In the armature room several days. Back in the machine shop for a few days, and then in the armature room.

(Testimony of W. L. Cochran.)

That extended during the time he was out there and until he quit. He always seemed to be thrifty. He always seemed to be busy. I did not see anything about his mental or physical condition which in any way impressed me. I didn't see anything wrong with him at all. [59]

Cross Examination by Mr. FLOOD.

I worked continuously in the armature room. He worked about three weeks with me there. Most of those three weeks he was in there. He was in there a few days and then a few days in the machine shop.

Redirect Examination by Mr. POPE.

It was off and on, but I remember one job in particular it was three weeks steady, but it was off and on during the time he was there.

C. F. MARTIN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is C. F. Martin. I reside at Sol Duc Hot Springs. I resided in Seattle in 1923 and 1924, at 503 North 42nd. I was a general contractor at that time. I became acquainted with Vernon A. Peterson prior to November, 1923. I became acquainted with him over the building of a theater in Georgetown, Duwamish Avenue. Negotiations started about November, 1923. These negotiations

(Testimony of C. F. Martin.)

were had with Mr. Vernon A. Peterson. With no one else until the papers were signed. I did not have occasion during these negotiations to visit the old theater. I had a general foreman on construction and met Mr. Peterson probably once or twice a week. I saw him probably a dozen times before we got the papers ready. I did not notice anything about his physical or mental condition which impressed me in any way. I purchased the property and built the building and sold it to him, giving him credit on the old equipment and furniture on the old theater. I built the building for Peterson. I entered into the contract with him for the sale [60] of the building before it was built. The purchase price for the building was forty four thousand dollars, but a little equipment was added on the total price and credit given, bringing it down to thirty nine thousand dollars. It was to be paid four hundred dollars a month. The building was a brick and concrete frame building. I believe there was a ten per cent margin on the building at that time. I don't know the net cost.

Cross Examination by Mr. FLOOD.

I am reading from the contract. That is my copy of the contract. I believe we started building April, 1924. That was the first contact I had with Mr. Peterson. It took several months to get the negotiations straightened out. The negotiations were in my office in the Seaboard Building, Seattle. He would come in several times to talk about the

(Testimony of C. F. Martin.)

theater. As near as I remember, he came in alone. There might have been someone else—theater equipment men, possibly. I gave credit of about \$5,000 on the fixtures. I don't believe there was a cash payment. The building was built on a loan from the Pacific Loan of Tacoma. I made the loan myself. Either I or someone working for me drew the plans and specifications. The plans were agreed upon to Mr. Peterson's satisfaction. I submitted the plans and they went through. I took the theater back five or six months later. He made the payments direct to the bank. I would not say that he made a payment. I took it away from him because he didn't make the payments. I have been a general contractor twenty five years. I am running the Sol Duc Hot Springs and contracting. My folks are living in Seattle. I am not living here right now. [61]

ALBERT POHL, recalled as a witness on behalf of the defendant, testified as follows on

Direct Examination by Mr. POPE.

I have compared defendant's Exhibit No. 11 with the time books which are marked defendant's Exhibit A-10. Defendant's exhibit A-11 correctly states all the evidence in the books as to Mr. Peterson's work record.

(Defendant's Exhibit No. A-11 received
and read in evidence)

(Testimony of Nora L. Held—E. L. Newman.)

NORA L. HELD, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is Nora L. Held. I am employed by A. V. Love Dry Goods Company as accountant and payroll clerk. I have records showing employment of Vernon A. Peterson—the payroll book. That was from September 12, 1928, to October 24, 1928. The designation of his employment was to look after the sawdust burner. He was paid on the 15th. I made a copy from the records myself and I compared it.

(Defendant's Exhibit A-12 received and read in evidence)

E. L. NEWMAN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is E. L. Newman. I reside at 1914 6th Ave. West. I am employed by A. V. Love Dry Goods Company. I was so employed in 1928. I knew Vernon A. Peterson in 1928. He was working down in the boiler room and I was working upstairs. I happened to go down once or twice a day to see [62] him. He was fireman down there. That was in 1928. He performed his duties all right. I think it was in September and October, 1928.

(Testimony of Harriet Anderson—K. R. Terry.)

HARRIET ANDERSON, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is Harriet Anderson. I am employed by the Seattle Office Equipment Company as book-keeper. I have the records of the company in my custody. I have the records of employment of Vernon A. Peterson by the Seattle Office Equipment Company in 1929 and 1930. He was employed from April 5, 1929, to January 5, 1930, at the rate of twenty two fifty a week. He was there regularly during that time.

K. R. TERRY, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is K. R. Terry. I reside at Seattle and I am employed by the Seattle Office Equipment Co. I was so employed in 1929 and 1930. Vernon A. Peterson was an employe of mine at that time. I observed him there at that time. He was doing janitor work in the store. The store has three floors.

(Testimony of C. R. Christie.)

He did ordinary janitor work. His work was fairly satisfactory.

Cross Examination by Mr. FLOOD.

He wasn't the best janitor we ever had. He left voluntarily. He was there every day—eight hours.
[63]

C. R. CHRISTIE, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is C. R. Christie, and I am employed by the United States Veterans Bureau. I am contact representative. I have had considerable experience in comparing signatures of veterans in making loans with the government, for the past four years.

DONALD BECKMAN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is Donald Beckman. I reside at 6507 32nd Northwest. I am employed by the Western Poster Company. I previously became acquainted with Vernon A. Peterson during the time he oper-

(Testimony of Donald Beckman.)

ated his theater—the Mission Theater in Georgetown. That acquaintance covered a period of years. I knew him during the time that he operated the theater, I believe. I would see him various times during the week. Our business is theatrical advertising, and he would come into our store for what advertising he needed for his theater. It would be several times a week, or sometimes only once a week. I do not remember that anyone else came with him. I did not notice anything wrong with Mr. Peterson during that time. He acted just like any other customer that we had.

Cross Examination by Mr. Newman.

I saw Mr. Peterson from day to day. I saw him when he came in. My contact with Mr. Peterson was very slight and he was a steady customer and I had no contact with him [64] except seeing him there come in as a customer in the store. The city clerk passed articles to him. Our office is a general meeting place and they all meet to discuss various things. I can only remember one conversation and that was after he lost his employment.

C. R. CHRISTIE, recalled as a witness for the defendant, testified as follows on

Direct Examination by Mr. POPE.

The signatures on the checks were written by the same person that signed the name “Vernon A.

(Testimony of C. R. Christie.)

Peterson" on Defendant's Exhibit A-5. The signature on the checks is the same as that on Defendant's Exhibit A-6.

Cross Examination by Mr. FLOOD.

I have never had any employment as a handwriting expert before. I have been with the Veterans Bureau since 1921. The first time that I saw the signature was in the court room. I used nothing but my naked eye to examine them.

(Defendant's Exhibit A-5 and Exhibit A-6 received in evidence and read to the jury)

Dr. L. R. QUILLIAM, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is L. R. Quilliam. I am a physician specializing in nervous and mental diseases. I graduated from the University of McGill, and took my medical education at Ann Arbor, Michigan. [65]

The COURT.—Qualifications admitted.

Mr. FLOOD.—Yes, Your Honor.

I am employed by the United States Veterans Bureau at Seattle.

The disease known as syphilis usually develops in three stages. The first is the stage of infection, which is marked by a sore on the penis which is

(Testimony of Dr. L. R. Quilliam.)

known as a chancre. I might qualify that by saying that that develops wherever the infection takes place, and it appears usually from four to five weeks after the infection takes place. The sore develops into a hard sore, and that is known as a chancre, and is known as a hard chancre in contrast with a sore condition known as soft chancre. The hard chancre is always a mark of syphilis; that manifests itself from four to six weeks after infection takes place; that is, the exposure to infection has taken place. We don't always find a chancre in that case; that is, on the external surface of the body. There might be an infection through the mouth or inside the mouth due to kissing somebody that has the disease, or may be infected by syphiletic mucous patches of the throat at that time diseased due to other infections, and usually a chancre appears from that. And then there is apparently a resting stage for a few weeks or months, usually less than a year, more often from six weeks to two months and there are manifestations on the body of the infection in the form of rashes or of sore throat or ulcers. That is known as the second stage. Then later on in life, if the third develops and this individual has not had treatment which arrested the disease or possibly cured it, we have the last manifestations of syphilis known as the tertiary stage of the disease, and that manifests itself by striking the nervous system, and in certain cases, [66] depending upon the form that the disease takes, it

(Testimony of Dr. L. R. Quilliam.)

either affects the spinal cord, the coverings of the brain, or else the brain itself, and if it affects the brain itself, it usually results in a form of insanity. That does not always follow syphilis at the stage where it reaches the central nervous system. Intensive and prolonged treatment and careful watching make it possible for a man to be cured, or it is possible for the disease to become arrested or to become so attenuated and lessen its effect that the third stage may not come, or possibly it will be very late in life. Before the disease reaches the central nervous system, many individuals go on without knowing they have the disease at all. Of course, treatment in the first place in the early stage of the disease may effect a cure. Then there is the fact that a man may have inherited syphilis, and a man may have an infection and be entirely innocent of any knowledge of having acquired the disease. If in the first stage of the disease a man has developed a chancre, there is a certain amount of inconvenience, and sometimes it leaves a scar, and sometimes it does not. In the second stage of the disease he may be incapacitated to a certain extent by reason of some sore throat or ulcers on the body, but he is not bedridden or prevented from doing ordinary work.

That is my signature on plaintiff's Exhibit No. 3, dated September 3, 1925. I remember Vernon A. Peterson and remember that that is my signature and evidently it is an examination I made at that

(Testimony of Dr. L. R. Quilliam.)

time. I have no recollection of that examination of him in 1925. After examining the man and after the report of the other examinations at that time, the complaint that he made and my own examination of the man, I concluded that it was syphilis of the nervous system,—an early case of syphilis of the nervous system. I don't [67] know how long before I examined him he had syphilis of the nervous system. I could not say how long he had had that condition in which I found him. I would say that I thought it was an early case of syphilis of the nervous system, and I don't know how long those symptoms were there. It was probably I would say an early stage of the tertiary stage of syphilis; that is, syphilis of the nervous system, which is the third stage of the disease—perhaps the early part. I can't tell you when the line crossed from second to the third stage. It is a progressive disease unless a man has had a lot of treatment, and the stage between the second and third is marked. The time it would take to progress is indefinite. In some cases the third stage of syphilis follows the second stage very soon. In other cases there is a very long delay depending upon the man's natural resistance to the disease. The personal element enters very much. Some men who acquire this infection become invalids very soon. In other cases they seem to have a natural resistance or partial immunity to the disease, and the third stage is held off for a great many years. During that time they may be unaware that

(Testimony of Dr. L. R. Quilliam.)

they have syphilis of the nervous system, or that they are affected with the disease.

The man's complaint was weakness and inability to do hard work. The condition was not a permanent one because I recommended at that time that the man be sent to the hospital for treatment, figuring that the man might be benefitted very greatly by treatment in the hospital. In my opinion he was not totally disabled at that time. [68]

Cross Examination by Mr. FLOOD.

I do not recall examining him since that time. I believe I have examined him only once. I recommended that he be sent to the Cushman Hospital at that time. I think he is sitting out there (pointing). I don't remember him.

Neuro-syphilis is the general name for syphilis of the nervous system. Neuro-syphilis would include syphilis of the nervous system, rather than where there are no manifestations of mental disease at all. Both neuro-syphilis and general paralysis of the insane are manifestations of the tertiary stage. If you find mental manifestations, an impairment of the mental faculties,—cerebro-spinal syphilis is another term for general paralysis of the insane—another form of it. Usually all cerebro-syphilis,—if syphilis has invaded the cortex of the brain there are usually mental symptoms as distinguished from purely symptoms of the nervous system. Neuro-syphilis; usually by that we mean that the infection

(Testimony of Dr. L. R. Quilliam.)

has invaded the covering of the brain and the covering of the spinal cord without involving the brain substance itself. I consider impairment of the mental processes as suggesting cerebro-syphilis. Also an impairment of the memory. "Orientation" is the ability to know where he is, what time it is, what day of the month it is; in other words, to be oriented is to know where he is. There are findings here suggesting involvement of the nervous system, that is, of the cortex of the brain as well as of the spinal cord. That would include a pretty general infection of the nervous system. I do not know whether or not I examined him later. Paresis, cerebral type, is the same thing as general paralysis of the insane. You usually find in certain stages of paresis that they show losses of memory. [69]

I have refreshed my recollection about the examination of January 13, 1930. At that time my diagnosis was paresis, cerebral type. It is the same as general paralysis of the insane. Cerebro-spinal syphilis has not advanced to the stage of paresis. "Euphoria" means a feeling of well being. That is symptomatic of paresis. "Prognosis" means outlook—whether he will get better or worse. "Prognosis unfavorable" means that the outlook is unfavorable as to the outcome of the disease. "Prognosis guarded" means that the outcome of the disease is uncertain depending largely upon the treatment and how the disease reacts to the treatment. "Prognosis guarded" simply means that if the man continues

(Testimony of Dr. L. R. Quilliam.)

treatment the chances are that he will be better, but if he is unable to get better because of defects or other reasons, or if he does not react well to treatment, he may get worse, and therefore the outlook is guarded. I think I found in my examination of 1925 that the outlook was guarded. If he didn't improve under treatment I would say that the outlook was unfavorable. I think the outlook is still guarded. Prognosis is guarded. Generally speaking, on a full-grown case of paresis, our prognosis is always unfavorable, but with the present treatment we find some of these cases undergo remarkable remissions, and that a man becomes apparently well; that since the advent of the malaria treatment and the arsenic treatment some of them undergo remarkable change, and some of them, so far as we can determine, are practically well. I recommended that he go to the hospital at Walla Walla or Portland. As a rule cerebro-spinal syphilis precedes paresis. Sometimes they co-exist. Neuro-syphilis is a disease that covers the whole thing. Cerebro-spinal syphilis means that the base of the brain, the cerebrum and the spinal cord are also affected, but [70] when we make out laboratory reports we find out on examination of the spinal fluid that it gives a distinct curve to certain types, in certain stages of the disease, and cerebro-spinal syphilis, a curve of entirely different type,—that is the reason why we usually classify the case. In the examination of 1925 I didn't take the spinal fluid. I presume I recom-

(Testimony of Dr. L. R. Quilliam.)

mended that the spinal fluid be taken. I didn't have a colloidal gold test made. A colloidal gold test is a corroborative test made from the spinal fluid.

Redirect Examination by Mr. POPE.

When I examined him in 1925 I found there was an irregularity of the pupils, but no other change. They reacted to light, and the reflexes were present. In 1930 I think there was still inequality in the reaction of the pupils of the eyes. The pupil is the round black spot in the center of the eye. It is merely a hole, the aperture through which the light enters, and enlarges or becomes smaller, depending upon the amount of light that can be admitted. They contract at light or get smaller when the light is bright, and get large or enlarge at night to admit more light. We find in syphilis of the nervous system, usually in cases of paresis, not always but usually, that they do not react; that that power to react to light, that is, of getting smaller is lost; in other words, the pupils get fixed. They are constant and always about the same in most cases. Sometimes larger than normal; but the light reflexes are lost. That is one of the most valuable signs we have of that stage of the disease; and when I examined him in 1925, there was some irregularity on the size of the pupils, that is, the opening on one side was larger than it was on the other; but the reaction to light was still [71] present. A comparison of the condition in 1925 with the condition in 1930 showed

(Testimony of Dr. L. R. Quilliam.)

an advanced condition. I mean that the eyes were more affected in 1930 than in 1925. The man gave a history of being regularly employed. I don't know definitely when this man contracted syphilis. From the change,—I examined him in 1925. My diagnosis at the time was that he had neuro-syphilis in the early stages, and from the fact that the light reflex was still in his pupils, and the fact that he had practically no change in his deep reflexes,—that is a very important sign,—the deep reflexes,—by tapping the tendon below the knee you get a marked jump of the leg. Usually, in advanced cases those are increased. In 1925 they were not increased; There was some increase in 1930; there was a Romberg at that time,—that is, standing with his feet together and his eyes closed, the individual sways,—the findings that we expect to find in the later stages of the disease; these were not present on the first examination. For that reason, I believed that was an early stage of syphilis of the nervous system. It was my opinion that the symptoms of the nervous system had not been present for more than two years prior to that. That is merely my opinion, because I didn't examine him until 1925, but I would expect to find it more pronounced if the conditions had existed over five or six or seven years. I don't believe he would have had the nervous symptoms as early as the year 1919. That would be six years prior to the first time I examined him.

(Testimony of Dr. L. R. Quilliam.)

Recross Examination by Mr. FLOOD.

I found increased reflexes in 1930. That is on the report (reads from report) "Deep reflexes are equal and about two plus; co-ordination normal." That means that the [72] reflexes are equal on each side, but both of them are exaggerated to two plus on a scale of four. This increase was about half of what we would scale as four plus. They were increased that much. All I know about the examination was what I put on the paper. By "deep reflexes patellar and Achilles active and equal" I mean normal. They were active and equal on that examination. Sometimes you will have an inequality, the reflex being more marked on one side than on the other; one may be normal and the other decreased, or one may be normal and the other increased, or you may have them normal and equal, or increased and equal, or decreased and equal. But when they are active and equal that means they are normal. They would have to be active to be normal. If they had been decreased, they would not be active. If they are just a little increased that would be one plus. One plus indicates nothing especially, just slightly hyper-active; two plus would be more active; four plus would be extremely active. Two plus is about half extremely active. The difference I found in 1930 and 1925 was the difference in reflexes and a difference in pupils. The pupils reacted very slightly to light. In 1930 the pupils were still unequal in size, but they reacted only slightly to

(Testimony of Dr. L. R. Quilliam.)

light, which is different entirely. Slurring of speech means inability to pronounce certain words distinctly, and I found that in 1925. That is a disturbance at the base of the brain. It is really the nerve that controls the muscles of speech, and, especially, the nerve that controls the muscles of the tongue. That is an involvement of cerebro-spinal syphilis. In 1930 I found some improvement in the scanning of speech. [73]

MARGARET MAHAN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is Margaret Mahan. I reside in Seattle, and resided at the same place in the years of 1920, 1921 and 1922. I was formerly employed at the Mission Theater in Georgetown. I was employed some time in 1920 or 1921. I must have been there for six months or a year. I was employed there by Mr. Woodhouse, and later on it was Mr. Peterson. Mr. Peterson was there when I first went there. He must have been there two or three months after I came. Mr. Peterson managed the theater. He was there in the evenings to see that the place was running all right. During the day he arranged the films and fixed things and things like that. I was an usher and later on cashier. No one except Mr. Peterson managed the place after Mr. Woodhouse left the

(Testimony of Margaret Mahan.)

theater. A little later there was a Mr. Lilly, but I don't think he took an active part. Mr. Lilly wasn't there very much. Sometimes he came out every night during the week. Well, he was there in the back when I came up, and checked up the cash. Mr. Peterson arranged handbills and different things to do with the business of the show.

Cross Examination by Mr. FLOOD.

I am twenty six years of age. I do not remember whether I was employed in 1921 or 1920. Mr. Lilly was about the place. He was a partner. Mr. Peterson put up the posters and swept out and did general things like that. General janitor work. I was there three or four months after Mr. Peterson was. I think it was longer. I left because we had a disagreement. [74]

Redirect Examination by Mr. POPE.

The fact that I had a disagreement with Mr. Peterson at the time I left there would not affect my testimony now.

Mr. OSCAR SWANSON, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows on

Direct Examination by Mr. POPE.

My name is Oscar Swanson. My business place is 5622 Corson Avenue. I knew Vernon A. Peterson. I used to be doing business with him. I used to lease

(Testimony of Oscar Swanson.)

the shop from him. That was about 1920, up to 1924. That shop was joining the Mission Theater. I rented the shop from Mr. Peterson. He had a ground lease. The property was owned by the same party. He had the lease on the Mission Theater and the shop, so I leased it from him and paid him fifteen dollars a month. I observed Mr. Peterson in connection with his work around the theater. I saw him almost every day. He had charge of the theater. He was manager of the theater. He and Woodhouse formed a partnership when I first went in there. To the best of my recollection Mr. Woodhouse left in 1919, or maybe 1920. A man by the name of Mr. Lilly had some money invested in it after that to the best of my recollection. He was around there frequently. He used to come around. He was kind of looking after things. Mr. Peterson was managing the place. It appeared to me that he was normal from 1920 up to August or September, 1924. He used to come in the shop quite often. I used to see him occasionally there. [75]

Mr. POPE.—At this time the government moves for a directed verdict on the same grounds and for the same reasons interposed in connection with the government's motion for a non-suit at the close of the plaintiff's case.

The COURT.—I will submit the matter to the jury.

Mr. POPE.—I would like to say this, Your Honor, assuming everything that was said to be

true, I can't see any evidence of total and permanent disability when he was discharged from the army at the time the contract was in force and effect.

The COURT.—I will submit the matter.

Mr. POPE.—May we have an exception to Your Honor's ruling?

The COURT.—Proceed with the argument.

(Argument by Mr. NEWMAN, Mr. POPE and
Mr. FLOOD)

The COURT.—Let the record show all the jurors present.

The issue in this case, gentlemen of the jury, is upon a policy of war risk insurance issued by the government, the defendant in this case, to Vernon A. Peterson while he was in the service of the army of the United States during the world war. He entered the service on the 30th day of November, 1917, and was discharged on January 9, 1919.

The COURT.—When did you say it was? [76]

Mr. POPE.—January 25, 1919.

The COURT.—It is admitted, or there is no proof to the contrary, that the premiums on this policy were paid to the date of his discharge, and, I believe, to midnight of the 31st day of January, 1919, and was in force and effect to midnight of the 28th day of February, 1919. The issue is the physical and/or mental condition of Vernon A. Peterson on

or before the 28th day of February, 1919.

We are dealing here with a written contract between the government and Vernon A. Peterson. We have nothing to do with the general laws with relation to relief of soldiers, popularly known as the "Pension Act," except insofar as applications which could have been made for pension under the general law may bear upon the facts with relation to his physical and/or mental condition. The insured, or Peterson, is no doubt receiving some consideration under the pension law. I don't know whether he comes under the Pension Act, but we must dismiss that from our minds. I mention that because there is in evidence an application made under the general law for pension which has a statement as to his health. But we are not concerned with anything but the man's physical or mental condition at the date of his discharge.

The burden of proof is upon the plaintiff to show that Peterson was totally disabled on the date of his discharge, and also that this total disability was permanent and reasonably certain to continue throughout his life. These things must be established by a fair preponderance of the evidence, and if it is not shown by a fair preponderance of evidence that he was totally disabled with a reasonable certainty to be permanent throughout his life, at midnight on the 28th day of February, 1919, then no recovery can be had. [77]

These things, total and permanent disability must be considered together. In determining the issue as to total and permanent disability and reasonable

certainty as to being permanent throughout his life, you should take into consideration all of the evidence presented during this trial; take into consideration every element and circumstance disclosed by the testimony in concluding as to the truth of this case. The court,—and you are a part of the court,—is here to discharge a fixed function and duty imposed by law, because of the disagreement between the plaintiff in this case and the defendant as to the total and permanent disability, and we can only determine that from the evidence which has been presented.

Now, in argument, something was said that the court denied the motion for a non-suit in this case, or dismissal. The fact that I denied a motion for non-suit, or motion to dismiss because of the record in this case is no evidence before you that the plaintiff has sustained the burden. The constitution of the United States fixed the right of a person to have a jury trial upon any amount in controversy in excess of Twenty Dollars, and it has been a mooted question before the Supreme Court whether the court has a right to dismiss any case, and no court, unless there is absolutely no evidence upon which a verdict can be sustained, or upon which to predicate any sort of a finding. The fact that there may be some evidence does not indicate that the burden has been established, controverting all the evidence presented, and that a conclusion would be arrived at upon the merits of the case upon a controverted issue,—so you will disregard the fact that I declined

to dismiss the case and not consider that in your determination, but conclude upon the evidence presented here, and the law, as to what the [78] facts are, and whether the greater weight of the evidence shows that the plaintiff—soldier—was totally and permanently disabled at the date of his discharge.

Total disability is deemed permanent when it results from a fixed condition of mind and/or body which renders it reasonably certain that the insured will continue to be totally disabled throughout his lifetime,—that the total disability existed at the date of his discharge in this case,—on the 28th day of February, 1919, and was at that time likely to be permanent and reasonably certain to continue throughout life.

Total disability is a relative term. It is not confined to the insured's employment or strength or facility to pursue continuously his usual vocation; a man might be disqualified,—unable to pursue his usual vocation; for instance, a man might be a telegraph operator, and if he lost his fingers he could not operate the keys, or if he lost his hand, that would disqualify him as acting as a telegraph operator, but he would not be totally disabled from following some vocation or occupation. It is not a condition which prevents him from doing anything whatsoever pertaining to his occupation, but only to the extent that he could not do any and every kind of activity pertaining to any gainful occupation.

The measure of total disability is not whether the insured's injuries would render it impossible for

him to do anything within the requirements. The term "continuously" is significant. Ability to work and apply one's self spasmodically or intermittently for short periods of time does not meet the requirement, the intendment of the law being that the injured person shall be able to adapt himself to some occupation or pursuit or employment, every [79] part of which employment he can discharge, that will bring him substantial, gainful results, something that will be dependable for earning a livelihood. The amount of gain is not so material, except that the pursuit of the endeavor must be one tantamount to substantial, gainful results.

Total disability, to be permanent, must be such as is founded upon conditions which render it reasonably certain that it will continue throughout his lifetime, and it is essential that the mental and physical condition of the person so disabled be so considered, and when so considered, the inquiry is whether the conditions are such from which the conclusion may be deduced that it is reasonably certain to continue throughout his life.

Reasonable certainty is not a matter of surmise or speculation. It is such a certainty as a reasonably prudent, scientific, careful and experienced person would conclude would probably be the result of conditions ascertained and present as a basis for deduction.

Permanent and total disability, within the meaning of this law and policy, does not necessarily mean that the — must be bedfast or bedridden; an attempt to work, inability to work being present, does

not necessarily negative a condition of total and permanent disability, but the essence of the total and permanent disability involves this question, which you must answer as a question of fact: Was Peterson at all times, at the date of his discharge, and all times since that date, suffered from an impairment of mind and/or body which has prevented him from continuously following a substantially gainful occupation, and has it been since said date reasonably certain that this condition would continue throughout life. And in this consideration, the insured is entitled, not only to the most favorable [80] aspect of the evidence which it reasonably bears, but also entitled to such reasonable inferences as arise from facts which have been proven; not on surmise or speculation, but facts which have been established.

During the course of this trial, and on argument, much was said with relation to the insured's present condition, or about his condition, and emphasis placed especially upon his condition since 1925. Now, the fact that the insured has been confined in a hospital for several years, as disclosed by the evidence, of itself, is not evidence of total and permanent disability at the date of his discharge. The fact that the doctors' examinations in 1925 and since that date have disclosed a condition, a nervous condition which has rendered him for the time totally impaired,—and Dr. Nicholson stated that from his examination in 1925 and 1926, I think it was, he thought the condition was permanent; However, you

heard what he said. He said there might be periods after he had reached that nervous stage, where the person would have periods of remission of the activity of the disease, but that the condition would continue, he thought; that the periods of remission depended greatly upon the individual; that sometimes persons having the affliction with which the insured is suffering, and do not know that they have it, possibly for a long time; sometimes persons have the disease and do not know for a long period of time. You will have to taken the evidence as he gave it, and, likewise, Dr. Quilliam for the defense.

The fact that this condition was found in 1925, of itself, does not show that the condition existed when he was discharged. Then, in order to find out what the condition was when he was discharged, you will have to take the evidence that is presented; what did the insured do in the [81] meantime; what activities was he engaged in; what medical advice did he demand, or did he go to a doctor; did he consult any doctors during all this time; did he make any claim of total and permanent disability when he made claim for allowance under the general law; that was, I believe, in 1925. What did the doctor say he found as to his condition; what did he say as to the date of its inception; what was his complaint as to his physical or mental condition? What did the wife say in the affidavits filed as to his physical and mental condition? When did this disability assert itself upon which the application for pension was made? Then, what did the insured do after he

left the army? Was he active? Was he employed? Where was he employed? Was it a position of responsibility? Did he continue in that employment regularly? What were his habits of life with relation to home and family? When did he eat? When did he go to bed? Did he act like a normal person? What do his employers say with relation to his conduct in doing the work for which he was employed? What was his relation to the employees? What was his conduct when he was in business for himself from 1920 to 1924 in the theater business? What does the contractor say? Who negotiated the lease or the contract for the theater involving forty four thousand dollars? What did he say about? How did he act? Did he act as a totally and permanently disabled person? Or, when did this total and permanent disability condition assert itself, and what was the cause?

If he had an ailment at the time of his discharge and that did not assert itself into a permanent or fixed condition until 1925, then he was not totally and permanently disabled when he was discharged, and as to the time when the total and permanent disability asserted itself, [82] I think you have a right to take into consideration the testimony of the nerve specialist who was called upon the stand by the plaintiff, and what he testified to, in considering whether he was totally and permanently disabled at the date of his discharge. I asked him how long it would probably continue, and he said from what he had learned from the case,—you heard what he

said,—and that it would likely continue in the future. I didn't ask as to the preceding period. The plaintiff did not ask him how long that antedated the 1925 examination, that total and permanent disability condition,—and you have a right to assume, when a witness is available or upon the witness stand, who is qualified by reason of expert knowledge or special training on a particular thing, or his knowledge with relation to the unfolding of the issue that is before the court, and the party who should ask him those questions does not do so,—then the court can assume that the answer to the question, if asked, would be against the party who should have developed the fact. What we want here is to have the truth established insofar as it may be done, and if the burden has been sustained by the plaintiff, then the plaintiff is entitled to recover; but we have no right, either you, as jurors, nor I, as judge, to attempt to pass largesse from the Treasury to any person making a demand.

There is another thing that you should take into consideration in this case, as well as other things, and that is, when was the action filed for total and permanent disability? Claim was filed under the pension law in 1925. Nothing was said about total and permanent disability. Claim was filed more than four years before this action was commenced. This action was commenced in this case on the 29th day of May, 1929,—ten years and practically four [83] months after the date of his discharge,—when it was asserted that he was totally and per-

manently disabled at the date of discharge. These are only circumstances that are developed in this case and are present, and conditions which we should take into consideration and dispose of as conscientious men in the discharge of sworn duty as officers of this court.

If I have referred to any fact in this case, it has not been to intimate to you any belief that I may have of the fact. I have no opinion. I am simply here to instruct you upon the law, and if I have referred to any fact or circumstance in the case that bears relation to the issue here, it has been simply for the purpose of challenging the attention of you jurors to these particular things for your consideration, and you will disregard any thought that you feel I have expressed as to the facts in this case, and find these facts for yourselves as developed from the witness' stand and the exhibits which have been presented in this case, to the end that the issues may be determined by twelve fairminded men who have been empanelled in this case for the purpose of finding what the fact is. From your finding upon the facts in this case there is no appeal. I merely suggest that to you to impress upon you the burden that rests upon you, and you must find what they are.

Now, the burden of proof, or preponderance of the evidence does not mean the greatest number of witnesses testifying to any fact or state of facts. It is the testimony which carries the convincing appearance of truth. It may be one exhibit or one

witness upon the witness stand that will have the greatest weight in determining what the truth is in this case; and you will take into consideration, [84] therefore, all the testimony presented here.

While you are the sole judges of the testimony here, *you also* the sole judges of the credibility of the witnesses, and in determining the weight or the credit you desire to attach to the testimony of a witness you will take into consideration the reasonableness of the story, the interest or lack of interest in the result of this trial, the opportunity of the witness for knowing the things about which he has testified, and from all this determine where you believe the weight of the evidence is. Give this issue fair consideration, so that the plaintiff will know that it has been shown fair consideration, and, likewise, give the government a square deal so that it will appreciate that fair consideration has been given to this issue.

It will require your entire number to agree upon a verdict, and when you have agreed you will cause it to be signed by your foreman whom you will elect immediately upon retiring to the jury room.

Two forms of verdict will be submitted; one will be "for the defendant;" and if you find for the plaintiff, you will find that he was totally and permanently disabled from midnight on the 28th day of February, 1919.

Have I covered the case? Are there any exceptions?

Mr. FLOOD.—There are two subjects upon which I would like an exception. Your Honor commented that where a witness was called by a party and was not asked a question on something that might have been asked, it would warrant the inference of an unfavorable answer. I think, Your Honor, that is not the law, and I know of no legal warrant for that. I would like an exception. [85]

The COURT.—So that the jury may not misunderstand the instruction, I will repeat it. You evidently misunderstood it.

Mr. FLOOD.—I hope I did.

The COURT.—Where a witness is upon the witness stand testifying to a particular issue; for instance, total and permanent disability; and he has testified to total and permanent disability, we will say, in 1925, and the issue is total and permanent disability in 1919, and if the witness is a doctor and he has examined the patient and knows about the conditions in the case and could enlighten the court and the jury and he is not asked the question, then the court has a right to assume that the answer would be unfavorable.

Mr. FLOOD.—I would like an exception. He was here for cross examination and might have been asked by the court or the counsel for the other side.

The COURT.—I think I conducted a good deal of this case as it was. I will frankly say that I think you supplied that in some other way.

Mr. FLOOD.—Counsel is astute and could handle his own case.

The COURT.—That is what he would avoid.

Mr. FLOOD.—The next consideration that we except to in Your Honor's instructions, is that Your Honor commented upon the fact that this action was filed ten years or more after discharge. I think Your Honor permitted an unfavorable inference to be drawn. [86]

The COURT.—Perhaps I did. He could bring that action any time that he wanted to within the period of limitation, which he did. You could take that into consideration as a circumstance as to whether the man was totally and permanently disabled in 1919, and whether he would wait ten years and four months before filing an action; that *that* fact, of itself, does not show that he was or was not totally and permanently disabled, but is merely a circumstance to be taken into consideration with all of the other testimony in the case as to whether that total and permanent disability existed on the 28th day of February, 1919.

Mr. FLOOD.—I think that improves it. However, may I ask for an exception because there is a guardianship in this case?

The COURT.—There is a guardianship established but that applies to the guardian as well.

Mr. FLOOD.—May I submit another consideration, Your Honor?

The COURT.—The guardian was appointed on the 12th day of November, 1926, and the guardian

acted for the insured after that time. That is not final, and is merely an element.

Mr. FLOOD.—Your Honor further stated that the claim was filed in 1925 and had no application to this insurance, but I submit, under the law, it covers both insurance and all the benefits under the act.

The COURT.—In the 1925 application, you take into consideration that it does include both, but if he was totally and permanently disabled prior to that time, should it have been filed prior to that time. That is merely a circumstance. [87]

Mr. FLOOD.—I would like an exception.

The COURT.—Note an exception to that.

Mr. POPE.—In connection with Your Honor's instruction, I understood you to say that Dr. Nicholson said that the man was totally and permanently disabled at the date of discharge. You mean at the date of examination in 1925?

The COURT.—How was that?

Mr. POPE.—You said that Doctor Nicholson testified that he was totally and permanently disabled at the date of discharge, if I understood correctly?

The COURT.—I said, in 1925, at the date of examination.

(Jury Retires).

And now, in furtherance of justice and that right and justice may be done the defendant, it prays that this, its bill of exceptions may be settled, al-

lowed, signed, sealed by the Court and made a part of the record.

ANTHONY SAVAGE,

United States Attorney.

CAMERON SHERWOOD,

Asst. United States Attorney.

LESTER E. POPE,

Regional Attorney,

U. S. Veterans' Bureau. [88]

(Title of Court and Cause.)

ORDER SETTLING BILL OF EXCEPTIONS

The above case coming on for hearing on application of the defendant to settle the bill of exceptions in this cause, counsel for both parties appearing; and it appearing to the Court that said bill of exceptions contains all of the material facts occurring upon the trial of the cause and all the evidence adduced at the same, together with exceptions thereto and all of the material matters and things occurring upon the trial, except the exhibits introduced in evidence, which are hereby made a part of said bill of exceptions; and the parties hereto having stipulated and agreed upon said bill; the Court being duly advised, it is by the Court

ORDERED that said bill of exceptions be, and it hereby is, settled as a true bill of exceptions in said

cause, which contains all of the material facts, matters, things and exceptions therefor, occurring upon the trial of said cause and evidence adduced at same and not of record heretofore, and the same is hereby certified accordingly by the undersigned Judge of this court who presided at the trial of said cause, as a true, full and correct bill of exceptions, and the Clerk of the Court [89] is hereby ordered to file the same as a record in said cause and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

It is further ORDERED that the Clerk of this Court attach all of the exhibits in this cause to said bill of exceptions, making the same a part hereof.

Dated this 2nd day of June, 1931.

JEREMIAH NETERER,
United States District Judge.

Copy Received May 28, 1931.

GEORGE E. FLOOD.

OK—

L. L. NEWMAN,
GEORGE E. FLOOD,
Attorneys for Plaintiff.
CAMERON SHERWOOD,
Asst. U. S. Atty.

[Endorsed]: Lodged May 28, 1931.

[Endorsed]: Filed Jun. 4, 1931. [90]

(Title of Court and Cause.)

NOTICE OF APPEAL.

To SEATTLE TITLE TRUST COMPANY, as
Guardian of the Estate of VERNON A.
PETERSON, Incompetent, plaintiff, and to
WETTRICK, WETTRICK & FLOOD, its attor-
neys:

YOU, and EACH OF YOU, will please take no-
tice that the United States of America, defendant in
the above entitled cause, hereby appeals to the United
States Circuit Court of Appeals for the Ninth Cir-
cuit from the judgment, decree and order entered
in the above entitled cause on the 3rd day of April,
1931, and that the certified transcript of record will
be filed in the said Appellate Court within thirty
(30) days from the filing of this notice.

ANTHONY SAVAGE,

United States Attorney.

CAMERON SHERWOOD,

Asst. United States Attorney.

LESTER E. POPE,

Regional Attorney, United States Veterans' Bureau.

Received a copy of the within this 8 day of

WETTRICK, WETTRICK & FLOOD,

Attorney for Plff.

[Endorsed]: Filed May 18, 1931. [14]

(Title of Court and Cause.)

PETITION FOR APPEAL.

The above defendant, feeling itself aggrieved by the order, judgment and decree made and entered in this cause on the 3rd day of April, 1931, does hereby appeal from the said order, judgment and decree, in each and every part thereof, to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors herein, and said defendant prays that its appeal be allowed and citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said order, judgment and decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as by the rules of said Court in such cases made and provided.

ANTHONY SAVAGE,

United States Attorney.

CAMERON SHERWOOD,

Assistant United States Attorney.

LESTER E. POPE,

Regional Attorney, United States Veterans' Bureau.

Received a copy of the within this 8 day of May, 1931.

WETTRICK, WETTRICK & FLOOD,

Attorney for Pttf.

[Endorsed]: Filed May 18, 1931. [15]

(Title of Court and Cause.)

ASSIGNMENTS OF ERROR.

Comes now the United States of America, defendant in the above entitled action, by Anthony Savage, United States Attorney for the Western District of Washington, Cameron Sherwood, Assistant United States Attorney for said District, and Lester E. Pope, Regional Attorney, United States Veterans' Bureau, Seattle, and, in connection with its petition for an appeal herein and the allowance of the same, assigns the following errors, which it avers occurred at the trial of said cause and which were duly excepted to by it at the time of said trial herein, and upon which it relies to reverse the judgment herein.

I.

The Court erred in denying the defendant's motion for a directed verdict, which motion was made at the close of the plaintiff's case, for the reason that the plaintiff did not prove permanent, total disability of Vernon A. Peterson during the time his policy was in effect, and to which denial defendant took exception at the time of the interposition of said motion herein.

II.

The District Court erred in denying defendant's petition for a new trial, which denial was excepted to by the defendant at the time of the interposition of said motion herein.

III.

The District Court erred in entering judgment upon the verdict herein, as the evidence was insufficient to sustain the verdict or judgment.

IV.

The District Court erred in denying defendant's motion for a direct verdict at the close of the entire testimony, which motion was interposed on the ground that Vernon A. Peterson had not been proven to have been permanently and totally disabled from following a gainful [16] occupation in a substantially continuous manner during the time his policy was in effect.

V.

That the Court erred in denying defendant's motion for a nonsuit at the close of the plaintiff's evidence, and renewed at the close of the entire case.

VI.

That the Court erred in admitting in evidence plaintiff's exhibits 2 to 15, inclusive, to the admission of which exhibits defendant duly objected, on the ground that their admission deprived the government of the right of cross-examination, which objection was overruled and exception noted.

ANTHONY SAVAGE,

United States Attorney.

CAMERON SHERWOOD,

Assistant United States Attorney.

LESTER E. POPE,

Regional Attorney, U. S. Veterans' Bureau.

Received a copy of the within Assignments of error this 16 day of May, 1931.

WETTRICK, WETTRICK & FLOOD,
Attorneys for Plaintiff.

L. L. Newman
HC

[Endorsed]: Filed May 18, 1931. [17]

(Title of Court and Cause.)

ORDER ALLOWING APPEAL.

On application of the defendant herein, it is hereby

ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment heretofore entered and filed herein on the 3rd day of April, 1931, be, and the same is, hereby allowed.

It is further ORDERED that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

Done in open Court this 18 day of May, 1931.

BOURQUIN,
United States District Judge.

Approved:

WETTRICK, WETTRICK & FLOOD,
Attorneys for Plaintiff.

Received copy of the within this 8 day of May,
1931.

WETTRICK, WETTRICK & FLOOD,
Attorney for Ptff.

[Endorsed]: Filed May 18, 1931. [18]

(Title of Court and Cause.)

ORDER

(Extending Time for Lodging Bill of Exceptions)
(Excerpt from Trial Record)

* * * The verdict is received, read, acknowledged by the jury, and ordered filed. The jury is discharged from the case and are excused to 10 A. M. next Tuesday. On motion of counsel for the defendant it is ordered that sixty days be granted to lodge proposed bill of exceptions.

Journal No. 19 at Page 68. [19]

(Title of Course and Cause.)

STIPULATION.

IT IS HEREBY STIPULATED between the parties to the above entitled action, by and through their respective attorneys of record, that the defendant herein may have up to and including the 3 day of June, 1931, in which to lodge and have settled its proposed bill of exceptions herein; and

It is **FURTHER STIPULATED** that the present term of Court may be deemed extended for that purpose.

Dated at Seattle, Washington, this 4 day of April, 1931.

ANTHONY SAVAGE,

United States Attorney.

CAMERON SHERWOOD,

Asst. United States Attorney.

LESTER E. POPE,

Regional Attorney, U. S. Veterans' Bureau.

GEORGE E. FLOOD,

Attorney for Plaintiff.

[Endorsed]: Filed Apr. 4, 1931. [20]

(Title of Court and Cause.)

ORDER.

Upon application of the defendant herein, and pursuant to stipulation of both parties, it is hereby

ORDERED that defendant herein may have up to and including the 3 day of June, 1931, in which to lodge and have settled its proposed Bill of Exceptions herein; and it is

FURTHER ORDERED that the present term of Court may be deemed extended for that purpose.

Done in open Court this 4th day of April, 1931.

JEREMIAH NETERER,

United States District Judge.

Received a copy of the within order this 2nd day of April, 1931.

WETTRICK, WETTRICK & FLOOD,
Attorneys for Ptf.

OK—GEORGE E. FLOOD,
Atty. for Pf.

[Endorsed]: Filed Apr. 4, 1931. [21]

(Title of Court and Cause.)

STIPULATION REGARDING TRANSMISSION
OF ORIGINAL EXHIBITS.

It is hereby STIPULATED between the parties to the above entitled action, by and through their respective attorneys of record, that the Clerk of the above entitled Court may send and transmit the original exhibits admitted in evidence herein to the Clerk of the Circuit Court of Appeals for the Ninth Circuit for the purpose of appeal herein, in lieu of copies thereof being printed and transmitted.

Dated at Seattle, Washington, this 18 day of May, 1931.

ANTHONY SAVAGE,

United States Attorney.

CAMERON SHERWOOD,

Assistant United States Attorney.

LESTER E. POPE,

Regional Attorney, United

States Veterans' Bureau.

Attorneys for Plaintiff.

Received a copy of the within this.....day of
....., 19.....

WETTRICK, WETTRICK & FLOOD,
Attorney for Plff.

[Endorsed]: Filed May 18, 1931. [91]

(Title of Court and Cause.)

ORDER REGARDING TRANSMISSION OF
ORIGINAL EXHIBITS.

Upon application of the defendant herein and pursuant to stipulation, it is hereby

ORDERED that the Clerk of the above entitled Court do and he is hereby directed to transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit all the exhibits of both parties herein which were admitted in evidence at the trial in lieu of certified copies thereof being transmitted to the Clerk of said Court of Appeals.

Done in open Court this 18 day of May, 1931.

BOURQUIN,
United States District Judge.

Approved:

WETTRICK, WETTRICK & FLOOD,
Attorneys for Plaintiff.

Received a copy of the within this.....day of
....., 19.....

WETTRICK, WETTRICK & FLOOD,
Attorney for Ptf.

[Endorsed]: Filed May 18, 1931. [92]

(Title of Court and Cause.)

PRAECIPE FOR TRANSCRIPT OF
RECORD ON APPEAL.

To the Clerk of the Above Entitled Court:

You will please prepare certified copies of the within mentioned papers in the above entitled cause, and you will transmit certified copies of the same with your complete transcript to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit for his use in connection with the appeal herein.

1. Complaint.
2. Answer.
3. Reply.
4. Verdict.
5. Judgment.
6. Motion for New Trial.
7. Order Denying Motion for New Trial.
8. All stipulations and orders extending time and term for filing bill of exceptions.
9. Stipulation and order regarding transmission of original exhibits.
10. Citation on Appeal.
11. Assignments of Error.
12. Petition for Appeal.
- 13a. Bill of Exceptions. [93]
13. Notice of Appeal.
14. Order Allowing Appeal.

15. Copy of this Praecipe.

ANTHONY SAVAGE,

United States Attorney.

CAMERON SHERWOOD,

Assistant United States Attorney.

LESTER E. POPE,

Regional Attorney,

U. S. Veterans' Bureau.

Received a copy of within Praecipe for transcript this 29th day of May, 1931.

WETTRICK, WETTRICK & FLOOD,

Attorneys for Plaintiff.

F. L.

[Endorsed]: Filed May 29, 1931. [94]

(Title of Court and Cause.)

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,

Western District of Washington.—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 94, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above entitled cause, as is required by praecipe of counsel, filed and shown

herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant herein for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above cause, to-wit: [95]

| | |
|--|---------|
| Clerk's fees (Act Feb. 11, 1925) for making certificate, record or return, 240 folios at 15¢ | \$36.00 |
| Appeal fee, Section 5 of Act | 5.00 |
| Certificate of Clerk to Transcript of Record | .50 |
| Certificate of Clerk to Original Exhibits | .50 |
| | <hr/> |
| Total..... | \$42.00 |

I hereby certify that the above cost for preparing and certifying the foregoing record, amounting to \$42.00 has not been paid to me for the reason that the appeal herein is being prosecuted by the United States of America.

I further certify that I hereto attach and herewith transmit the original citation issued in the cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court of Seattle, in said District, this 9th day of June, 1931.

(Seal) ED. M. LAKIN,

Clerk United States District Court,
Western District of Washington.

By TRUMAN EGGER,

Deputy Clerk. [96]

(Title of Court and Cause.)

CITATION ON APPEAL.

United States of America,
Western District of Washington,
Northern Division.—ss.

The President of the United States to:

SEATTLE TITLE TRUST COMPANY, as Guardian of the Estate of Vernon A. Peterson, Incompetent, Plaintiff, and to WETTRICK, WETTRICK & FLOOD, its attorneys:

YOU and EACH OF YOU are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals to be held at the City of San Francisco, California, in the Judicial Circuit, on the 19th day of June, 1931, pursuant to an order allowing appeal filed in the office of the Clerk of the above entitled Court, appealing from the final judgment signed and filed on the 3rd day of April, 1931, wherein the United States of America is defendant and Seattle Title Trust Company, as guar-

dian of the estate of Vernon A. Peterson, Incompetent, is plaintiff, to show cause, if any there be, why the judgment rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf. [97]

(Seal)

BOURQUIN,

United States District Judge.

Received a copy of the within this 8 day of ,
19.....

WETTRICK, WETTRICK & FLOOD,

Attorneys for Ptff. [98]

[Endorsed:] Filed May 18, 1931. [97]

[Endorsed]: No. 6490. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Seattle Title Trust Company, as guardian of the Estate of Vernon A. Peterson, Incompetent, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed June 12, 1931.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.